



TOWN OF FREDERICK

Frederick Town Hall 401 Locust Street
Town Board of Trustees Agenda
Tuesday, January 22, 2013

6:30 P.M.
Work Session

7:00 P.M.
Regular Meeting:

Call to Order – Roll Call

Pledge of Allegiance

Approval of Agenda

Special Presentations

Carbon Valley Parks and Recreation District – Renee Witty, Executive Director

Public Comment - This portion of the Agenda is provided to allow members of the audience to provide comments to the Town Board. Please sign in and the Mayor will call you. If your comments or concerns require an action, that item(s) will need to be placed on a later Agenda. Please limit the time of your comments to five (5) minutes.

Staff Reports

- A. Administrative Report – Matt LeCerf, Town Manager
- B. Town Attorney's Report – Rick Samson, Town Attorney

Liquor Licensing Authority

- C. Glacier Liquors Liquor License Renewal – Kristin Brown, Town Prosecutor
- D. Buckwild's Saloon Liquor License Renewal – Kristin Brown, Town Prosecutor

Action Agenda

- E. Ordinance 1124 Enacting Chapter 6, Article III, Section 6-76 of the Code Entitled Alcohol Beverage Tastings – Kristin Brown, Town Prosecutor
- F. 4th Addendum IGA with the Carbon Valley Recreation District to Support the Carbon Valley Seniors – Matt LeCerf, Town Manager
- G. 13R4 Incentives for Longmont United Hospital Phase 1 – Matt LeCerf, Town Manager
- H. Indian Peaks Medical Center Request to Postpone Undergrounding of the Overhead Electrical Line to the Next Phase of Site Development – Mohammed Said, Civil Engineer
- I. Proposal for Exception for Public Improvements Security for Carriage Hills 2 and Johnson Farm – Richard Leffler, Engineering and Utilities Director

Consent Agenda Consent Agenda items are considered to be routine and will be enacted by one motion and vote. There will be no separate discussion of Consent Agenda Items unless a Board member so requests, in which case the item may be removed from the Consent Agenda and considered at the end of the Consent Agenda.

- J. Resolution 13R5 Milavec Lake Bond Payment – Matt LeCerf, Town Manager
- K. Facilities Maintenance Service Agreement for 2013 – Kiel Mangus, Public Work Director

- L. Resolution 13R6 Amending the Process for the Mayor and Town Clerk to Sign and Process Applications for Water Allotments as Required by the Rules of the Northern Colorado Water Conservancy District– Dick Leffler, Engineering and Utilities Director
- M. Ordinance 1126 Revising Chapter 10, Article VI, Section 10-113 of the Code entitled Possession of Marijuana – Kristin Brown, Town Prosecutor
- N. Acknowledgement of Receipt of List of Bills – Mitzi McCoy, Finance Director
- O. Approval of January 8, 2013 Minutes – Meghan C. Martinez, Town Clerk

Mayor/ Trustee Reports

Frederick (1/22 T - 7:00), Firestone (1/23 W - 6:30), Dacono (1/28 M- 6:00)

Usage Numbers – January through December – 149,849 compared to 137,806

in 2011. The biggest increase was in family memberships with over 5000 more visits in 2012. The offer of free childcare as well as the “Rec Bucs” helped make many families take advantage of using their membership. Currently, the District is offering 15% off the annual memberships and staff is very pleased that people are making the choice to renew their membership. We have also given many tours so far this year with people moving in to the community.

Youth nights – Averaged 90 kids in attendance in October, November, and December. New Year’s Celebration was the theme in January with 170 kids in attendance (the biggest ever). February will be Valentine’s Day with a DJ, March will celebrate St. Patrick’s Day and April will have a “fools” theme.

Youth and teen programs were tremendously successful this past year with sporting around classes for toddlers, weight training, boot camp, youth fit and move, story hour and summer camp. The toddler art classes called marvelously messy and my first art class were a great success as well. All of these programs are back again for 2013 and the attendance so far has been outstanding.

Youth basketball is going on right now 37 teams playing from grades pre-school to 8th grade. Gymnastics classes are almost completely full. The gymnastics program is also getting their Murder Mystery Dinner fundraiser organized that will take place on March 2nd. Dance class is going well. The new swim lesson program is doing great with parents and children really enjoying the type of instruction they are getting and with the pool hours also helping in that area as well. The Districts swim team (45 participants) hosted a swim meet on January 19th and it went great.

The annual Halloween Party and Chili supper was well attended, and 40 participants took free throw shots at the Turkey Shoot. Breakfast with Santa had 42 participants and 45 parents in attendance enjoying Santa, snacks, and doing a Christmas craft. The annual craft fair was well attended and many people enjoyed shopping. The Gymnastics Fall Festival was also a great success with over 100 families attending the day having fun going through the maze, painting pumpkins, playing the obstacle course bounce house, and going on a long, bumpy hayride. Holiday food baskets were given out for both Thanksgiving and Christmas to local families with the hard work of many volunteers.

Dacono BMX received wonderful news that we will be hosting a Red Line Cup qualifying race in May which is like a mini – national and a State race. Work on the track will begin soon and practices and racing will start in March and April. Recreation District staff and the City of Dacono are working on a capital improvement plans so that eventually the track could be awarded a national race.

Adult activities have also been very popular. The annual fit a thon held on the day before Thanksgiving was full. A new yoga instructor has been hired and started to teach classes. Weight loss class, Zumba, Silver Sneaker, and all of the wonderful other fitness classes were well attended in 2012 and have started at with a bang in 2013. New health and wellness seminars have also been planned for the new year. Adult volleyball ended their season and now 8 men's basketball teams have started to play on Sunday evenings.

The Silver Sneaker program has grown 651 enrollments. The Carbon Valley Senior Center averages between 85-90 sign-ups for their weekly luncheons which are all catered by local restaurants. At the end of 2012 there were 253 members (Brighton-2, Platteville-4, Longmont-2, Ft. Lupton-4, Boulder-1, Dupont-1, Dacono-52, Frederick-102, Firestone-83, and Erie-2, Brighton-2, Platteville-4). Their memberships are paid on an annual basis and so far 122 have signed up for 2013. I attached the breakout of how the extra \$12,000 in funds that each Town and City contributed to the Senior program was spent. The 2013 budget was also changed to show more accurate budget figures for income and expenses. The Carbon Valley Seniors were very busy at the end of the year and took great trips to Glenwood and Chama-Antonito. Trips to the Stock Show, Blackhawk, Candlelight Theatre, Keystone, and Ireland are just a few planned over the next few months.

The 2013 budget will allow the District to do some capital improvement projects in the Recreation Center. 14 new spin bikes will be purchased and new floors will be put in the weight room and cardio room, work on the racquetball and aerobics room floors, as well as the replacement of the carpet. The existing building has been open for almost 9 years and the need to update is needed. The new cardio equipment that was purchased in 2012 has been a great asset to the facility and with these other changes the staff and Board of Directors feel the Recreation Center will be in good shape.

The community survey was a great success and I forwarded the results to each community. The Board of Directors and staff feel the results were overall very positive and with the information gathered District goals will be set. Once the goals are set, master planning can begin.

Upcoming events:

- Upcoming youth sports registration – Soccer, girls softball, baseball, and track
- Upcoming adult sports registration – Coed Volleyball, Men's and Coed Softball
- Swim lesson registration
- Sweetheart punch pass sale
- No school day activities and Spring Break Club
- Family Days at the Recreation Center with a chance to win prizes
- Annual Spring Fling event and membership sale on March 16
- Easter Basket Decorating Class on 3/21 and the annual Easter Egg Hunt on 3/30

10: . AM

01/14/13

Accrual Basis

CARBON VALLEY RECREATION DISTRICT
Transaction Detail By Account
 January through December 2012

Type	Date	Num	Name	Memo	Class	Amount	Balance
8120 - Grant Expense							
Bill	1/25/2012		Jim Ehrlich	senior dance payment...		40.00	40.00
Bill	3/12/2012		Jim Ehrlich	senior dance payment...		175.00	215.00
Bill	4/4/2012		BestWay Concrete...	senior parking		2,111.95	2,326.95
Bill	4/13/2012		The Home Depot	shed for seniors		2,279.01	4,605.96
Bill	5/2/2012		Pete's Place	6.00 per lunch/95		510.00	5,115.96
Bill	5/11/2012		American Express	patio covering for seni...		307.54	5,423.50
Bill	5/11/2012		American Express	recieved grant money ...		300.00	5,723.50
Bill	6/1/2012		The Home Depot	shed for seniors		37.91	5,761.41
Bill	6/1/2012		OTTO GOULD, C...	WIFI		41.50	5,802.91
Bill	6/4/2012		Ace Hardware	shelving for shed		23.97	5,826.88
Bill	6/6/2012		PepperJacks	senior picnic		165.00	5,991.88
Bill	6/6/2012		Jim Ehrlich	senior dance payment...		175.00	6,166.88
Bill	6/6/2012		American Express	insurance for awnings		239.98	6,406.86
Bill	6/18/2012		Stallings Construct...			290.00	6,696.86
Bill	6/18/2012		The Home Depot	shed for seniors		41.70	6,738.56
Bill	7/1/2012		Pete's Place	big picnic		570.00	7,308.56
Bill	7/3/2012		PepperJacks	senior picnic		175.00	7,483.56
Bill	7/3/2012		Jim Ehrlich	senior dance payment...		175.00	7,658.56
Bill	7/3/2012		Clarence Yoder	senior picnic music		250.00	7,908.56
Bill	7/9/2012		Karen Cain	picnic expense		36.71	7,945.27
Bill	7/20/2012		All Events Tent an...			1,102.50	9,047.77
Bill	8/1/2012		Wah Wok	extra funds		495.00	9,542.77
Bill	8/1/2012		Accent Electrical S...	outside electrical outle...		475.00	10,017.77
Bill	8/1/2012		PepperJacks	senior picnic		195.00	10,212.77
Bill	8/1/2012		Claire Valin			75.45	10,288.22
Bill	8/1/2012		Pat Martin	senior picnic		31.01	10,319.23
Bill	8/1/2012		EMPIRE PLUMBI...	senior picnic		320.00	10,639.23
Bill	8/1/2012		CPRA	senior training		75.00	10,714.23
Bill	8/1/2012		VISA	senior picnic		20.85	10,735.08
Bill	8/1/2012		Pete's Place			330.00	11,065.08
Bill	8/1/2012		Gloria Walsh	big picnic		12.94	11,078.02
Bill	8/1/2012		Wah Wok	senior lunch paid by e...		106.75	11,184.77
Bill	9/5/2012		PepperJacks	senior picnic		210.00	11,394.77
Bill	9/5/2012		Jim Ehrlich	senior dance payment...		175.00	11,569.77
Bill	10/3/2012		Pete's Place	last evening picnic		186.00	11,755.77
Bill	12/31/2012		The Bridge Assiste...	senior lunch		244.23	12,000.00
Total 8120 - Grant Expense						12,000.00	12,000.00
TOTAL						12,000.00	12,000.00

**TOWN OF FREDERICK
ATTORNEY STATUS REPORT
January 17, 2013**

LITIGATION

Item/Topic	Date Initiated	Status/Date Completed
KP Kauffman Fee dispute, (post) Appeal	12/20/2012	Ct of Appeals denied (KPK) motion to publish Ct of Appeals opinion from October 2012; opinion remains unpublished with limited applicability

DEVELOPMENT MATTERS-RECENT

Item/Topic	Date Initiated	Status/Date Completed
Hauck Preserve	2012	Awaiting deposit of initial escrow from owners
NATEX Recycling	2012	Monitoring progress through environmental consultant at business; Awaiting submittals to Bldg Div and for commercial recycling site conditional use requirements; submission deadline is 1/22/2013
Wyndham Hill Flg 7	2012	Pending, Preparing development review comments on submittal materials; awaiting supplemental application materials
Indian Peak Medical Center	2013	Finalizing MOAPI to accommodate non-traditional forms of improvement security; researched CML member data on accepting CD and other deposit accounts for improvement security; awaiting developer and BOT review 01/22/2013

DEVELOPMENT MATTERS-CARRYOVER

Item/Topic	Date Initiated	Status/Date Completed
Rinn Villy Park Improvements	2008	Awaiting final costs from developer; LOC extension expires 06/2013; Mtg w/ staff and developer held 01/08/2013
Halleck Subdivision Replat/Rd Engineering	2009	Delayed; Proceeding with sidewalk and ROW dedication; Owner not in hurry to set ROW alignment or address HOA issues though
Miner's Park Town Center Agreement to Dedicate	2012	Developer approved initial agreement to designate property to be dedicated; Agreement finalized and

		submitted for developer execution on 12/28/2012; awaiting return of executed deed for BOT execution; Awaiting details on o/g operator request to developer to drill outside statutory drill windows and areas provided under surface use agreement
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LICENSES, FRANCHISES, AGREEMENTS, CONTRACTS AND ORDINANCES

Item/Topic	Date Initiated	Status/Date Completed
LG Everist Annex	2011	BOT approval at public hearing on 01/08/2013
Potential Annexation-Del Camino	2012	<ul style="list-style-type: none"> Working with staff on CDOT road access and improvement requirement re: one (1) new property adjacent to I-25 frontage Determined options and requirements for frontage road annexation, prepared advisement for staff Finalized special conditions to two annexation agreements, property owners have executed and returned to Town for acceptance/execution
Oil/Gas operator MOU	2012	Researching options for achieving operator compliance on local matters through MOU vs. reg'n
Proposed OGCC rulemaking	2013	Reviewing proposed setback and development rules before COGCC; analyzing surface developer requirements at platting stage to accommodate subsequently permitted wells; meeting with staff 01/22/2013 on recommendations for developers
Seismic testing bond requirements	2013	Researching impact of oil/gas seismic testing on town roads; working with staff on setting additional bonding or other requirements to include as right of way permit conditions
Cleland/farmer lease-Marx Property	2013	Review proposed revisions to tenant farmer agreement on recently-acquired Marx property; advise staff on water and payment timing issues.

OTHER LEGAL MATTERS

Item/Topic	Date Initiated	Status/Date Completed
OCon Group – Unit G, 7601 Miller Dr	2012	Monitoring, CO-reinstated, tenant permit construction underway;
Under road communication licensing	2012	Monitoring submittals to Bldg and Engineering staff for ROW license at church to connect properties on Walnut with underground communication link.

GENERAL ADVICE ITEMS

Item/Topic	Date Initiated	Status/Date Completed
Land Use Code Amendments; Churches in Industrial zones	2012	Denied by Planning Commission on 9/4/12, Awaiting 11/13 review, BOT directed er action
Amendment 64	2012	Reviewed CML materials on amendment and timing for State regulations; Conferred with prosecutor on request from PD; Awaiting BOT review and direction on draft ordinance(s)

INACTIVE

LITIGATION

Oil and gas inspection fees	2007	All operators billed for 2011; Collections are on hold, pending outcome of KPK appeal on enforceability of inspection/ monitoring fee
VanDeventer (Net Lease)	10/07	Monitoring; property is currently posted for sale, but no activity in 5 yrs; Item on Attny 2012 major project list- need direction from BOT on whether to proceed with survey recording or wait for R/E activity
St. Dimitrie development fee challenge	2011	Inactive since November 2011; awaiting info from owner regarding potential settlement, Town Admin negotiated settlement

DEVELOPMENT MATTERS

Falcon Environmental	2011	Delayed, awaiting applicant information
Miners' Park TC-Kerr McGee Pipeline	5/20 12	Monitoring, awaiting development plans that trigger KerrMcGee coordination on pipeline extension and realignment; Permits for wells not sought yet
Johnson Farm/The Farm-dev agreement modification-park trigger	2010	Awaiting 3rd replat mylar, St Aubyn purchased bulk of vacant lots in 7/2012; weeds cut but trash remain on properties of disparate ownership, CSOs taking follow up action on mitigation
Hinkle Farm Filing 1	2007	Monitoring; awaiting info from Developer

LICENSES, FRANCHISES, AGREEMENTS, CONTRACTS AND ORDINANCES

Fence Permit/Review Resolution	2009	Inactive
United Power Agmnt	2009	Delayed, Engineer reviewing alt power purchase options and setting up meeting on asset values
New Consolidated Lwr Bldr Res/Ditch Co Agreement-Waters Edge	2009	Delayed, awaiting QC deeds from Ditch Co
About Solar extra-terr service	2011	Inactive, company filing bankruptcy
Potential water rights/ share acquisition	2012	Abandoned following withdrawal of offer pending verification of title and associated legal action between co-tenants, awaiting clarification of ownership issues and direction from BOT

OTHER LEGAL MATTERS

St Vrain San/Tri-Area Properties	2007	Inactive; Refined list of easements
Kerr McGee App's for Hauck Wells	2008	Inactive; letter sent to Kerr McGee, awaiting compliance
Fred Rec Area/Milavec-Nobel	2009	Inactive, Nobel not reimbursing for rd, barbed wire violation cured
Machii-Ross new well applications to COGCC, and non-compliance w/ FMC	4/27/20 10	Inactive, awaiting State reply to Town letter, well app is reserving rather than preparing to operate
Fred. H.S. ditch rights issue	2011	Awaiting info from ditch co
Summit Field/Mordini Watters construction water use billing	2010	Inactive, need BOT direction on engaging PI or dropping
Oil and gas inspections	2011	Pending, CSO proceeding with 2012 monitoring; drafting revised process under KPK decision
DOLA severance tax collections	2011	Delayed, Staff preparing updated info request forms for DOLA

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DEPARTMENT USE ONLY

COLORADO LIQUOR RETAIL LICENSE APPLICATION

<input type="checkbox"/> NEW LICENSE <input type="checkbox"/> TRANSFER OF OWNERSHIP <input checked="" type="checkbox"/> LICENSE RENEWAL			
• ALL ANSWERS MUST BE PRINTED IN BLACK INK OR TYPEWRITTEN • APPLICANT MUST CHECK THE APPROPRIATE BOX(ES) • LOCAL LICENSE FEE \$ <u>227-50</u> • APPLICANT SHOULD OBTAIN A COPY OF THE COLORADO LIQUOR AND BEER CODE (Call 303-370-2165)			
1. Applicant is applying as a <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership (includes Limited Liability and Husband and Wife Partnerships)		<input type="checkbox"/> Individual <input checked="" type="checkbox"/> Limited Liability Company <input type="checkbox"/> Association or Other	
2. Applicant If an LLC, name of LLC; if partnership, at least 2 partner's names; if corporation, name of corporation <u>GLACIER LIQUORS LLC</u>		Fein Number <u>24-0674233</u>	
2a. Trade Name of Establishment (DBA) <u>GLACIER LIQUORS, LLC</u>		State Sales Tax No. <u>04253790-0000</u>	Business Telephone <u>303-833-6878</u>
3. Address of Premises (specify exact location of premises) <u>3652 RELIANCE DRIVE</u>			
City <u>FREDERICK</u>	County <u>WEIR</u>	State <u>CO</u>	ZIP Code <u>80516-9487</u>
4. Mailing Address (Number and Street) <u>3652 RELIANCE DRIVE</u>		City or Town <u>FREDERICK</u>	State <u>CO</u>
ZIP Code <u>80516-9487</u>			
5. If the premises currently have a liquor or beer license, you MUST answer the following questions:			
Present Trade Name of Establishment (DBA) <u>GLACIER LIQUORS, LLC</u>		Present State License No. <u>42-53790-0000</u>	Present Class of License <u>1940 / 2180</u>
Present Expiration Date <u>12/27/2012</u>			
LIAB SECTION A NONREFUNDABLE APPLICATION FEES		LIAB SECTION B (CONT.) LIQUOR LICENSE FEES	
2300 <input type="checkbox"/> Application Fee for New License \$1,025.00 2302 <input type="checkbox"/> Application Fee for New License - w/Concurrent Review \$1,125.00 2310 <input type="checkbox"/> Application Fee for Transfer \$1,025.00		1985 <input type="checkbox"/> Resort Complex License (City) \$500.00 1986 <input type="checkbox"/> Resort Complex License (County) \$500.00 1988 <input type="checkbox"/> Add Related Facility to Resort Complex ... \$ 75.00 X Total _____ 1990 <input type="checkbox"/> Club License (City) \$308.75 1991 <input type="checkbox"/> Club License (County) \$308.75 2010 <input type="checkbox"/> Tavern License (City) \$500.00 2011 <input type="checkbox"/> Tavern License (County) \$500.00 2012 <input type="checkbox"/> Manager Registration - Tavern \$ 75.00 2020 <input type="checkbox"/> Arts License (City) \$308.75 2021 <input type="checkbox"/> Arts License (County) \$308.75 2030 <input type="checkbox"/> Racetrack License (City) \$500.00 2031 <input type="checkbox"/> Racetrack License (County) \$500.00 2040 <input type="checkbox"/> Optional Premises License (City) \$500.00 2041 <input type="checkbox"/> Optional Premises License (County) \$500.00 2045 <input type="checkbox"/> Vintners Restaurant License (City) \$750.00 2046 <input type="checkbox"/> Vintners Restaurant License (County) \$750.00 2220 <input type="checkbox"/> Add Optional Premises to H & R \$100.00 X Total _____ 2370 <input type="checkbox"/> Master File Location Fee \$ 25.00 X Total _____ 2375 <input type="checkbox"/> Master File Background \$250.00 X Total _____	
LIAB SECTION B LIQUOR LICENSE FEES			
1905 <input type="checkbox"/> Retail Gaming Tavern License (City) \$500.00 1906 <input type="checkbox"/> Retail Gaming Tavern License (County) \$500.00 1940 <input checked="" type="checkbox"/> Retail Liquor Store License (City) \$227.50 1941 <input type="checkbox"/> Retail Liquor Store License (County) \$312.50 1950 <input type="checkbox"/> Liquor Licensed Drugstore (City) \$227.50 1951 <input type="checkbox"/> Liquor Licensed Drugstore (County) \$312.50 1960 <input type="checkbox"/> Beer and Wine License (City) \$351.25 1961 <input type="checkbox"/> Beer and Wine License (County) \$436.25 1970 <input type="checkbox"/> Hotel and Restaurant License (City) \$500.00 1971 <input type="checkbox"/> Hotel and Restaurant License (County) \$500.00 1975 <input type="checkbox"/> Brew Pub License (City) \$750.00 1976 <input type="checkbox"/> Brew Pub License (County) \$750.00 1980 <input type="checkbox"/> Hotel and Restaurant License w/opt premises (City) \$500.00 1981 <input type="checkbox"/> Hotel and Restaurant License w/opt premises (County) \$500.00 1983 <input type="checkbox"/> Manager Registration - H & R \$ 75.00			
DO NOT WRITE IN THIS SPACE - FOR DEPARTMENT OF REVENUE USE ONLY			
LIABILITY INFORMATION			
County	City	Industry Type	License Account Number
State	City	County	Managers Reg
-750 (999)	2180-100 (999)	2190-100 (999)	-750 (999)
Cash Fund New License 2300-100 (999)			Cash Fund Transfer License 2310-100 (999)
			TOTAL \$.

19. If applicant is a corporation, partnership, association or limited liability company, applicant **must list ALL OFFICERS, DIRECTORS, GENERAL PARTNERS, AND MANAGING MEMBERS**. In addition applicant **must list** any stockholders, partners, or members with **OWNERSHIP OF 10% OR MORE** IN THE APPLICANT. ALL PERSONS LISTED BELOW must also attach form DR 8404-I (Individual History record), and submit finger print cards to their local licensing authority.

NAME	HOME ADDRESS, CITY & STATE	DOB	POSITION	% OWNED*
NARINDER K. POONIA	1396 FLETCHER DRIVE ERIE, CO 80516	3/16/54	OWNER	100

*If total ownership percentage disclosed here does not total 100% applicant must check this box

☐ Applicant affirms that no individual other than these disclosed herein, owns 10% or more of the applicant

Additional Documents to be submitted by type of entity

- ☐ CORPORATION ☐ Cert. of Incorp. ☐ Cert. of Good Standing (if more than 2 yrs. old) ☐ Cert. of Auth. (if a foreign corp.)
☐ PARTNERSHIP ☐ Partnership Agreement (General or Limited) ☐ Husband and Wife partnership (no written agreement)
☒ LIMITED LIABILITY COMPANY ☐ Articles of Organization ☐ Cert. of Authority (if foreign company) ☐ Operating Agrmt.
☐ ASSOCIATION OR OTHER Attach copy of agreements creating association or relationship between the parties

Registered Agent (if applicable)

Narinder Poonia

Address for Service

3652 RELIANCE DRIVE FREDERICK, CO 80516

OATH OF APPLICANT

I declare under penalty of perjury in the second degree that this application and all attachments are true, correct, and complete to the best of my knowledge. I also acknowledge that it is my responsibility and the responsibility of my agents and employees to comply with the provisions of the Colorado Liquor or Beer Code which affect my license.

Authorized Signature

Narinder Poonia

Title

OWNER

Date

11/06/2012

REPORT AND APPROVAL OF LOCAL LICENSING AUTHORITY (CITY/COUNTY)

Date application filed with local authority

Date of local authority hearing (for new license applicants; cannot be less than 30 days from date of application 12-47-311 (1)) C.R.S.

THE LOCAL LICENSING AUTHORITY HEREBY AFFIRMS:

That each person required to file DR 8404-I (Individual History Record) has:

- ☐ Been fingerprinted ☒ Yes ☐ No
☐ Been subject to background investigation, including NCIC/CCIC check for outstanding warrants ☒ Yes ☐ No

That the local authority has conducted, or intends to conduct, an inspection of the proposed premises to ensure that the applicant is in compliance with, and aware of, liquor code provisions affecting their class of license ☒ Yes ☐ No

(Check One)

- ☐ Date of Inspection or Anticipated Date _____
☐ Upon approval of state licensing authority.

The foregoing application has been examined; and the premises, business to be conducted, and character of the applicant are satisfactory. We do report that such license, if granted, will meet the reasonable requirements of the neighborhood and the desires of the adult inhabitants, and will comply with the provisions of Title 12, Article 46 or 47, C.R.S. **THEREFORE, THIS APPLICATION IS APPROVED.**

Local Licensing Authority for

Telephone Number

- ☐ TOWN, CITY
☐ COUNTY

Signature

Title

Date

Signature (attest)

Title

Date

6. Is the applicant (including any of the partners, if a partnership; members or manager if a limited liability company; or officers, stockholders or directors if a corporation) or manager under the age of twenty-one years?	Yes	No
	<input type="checkbox"/>	<input checked="" type="checkbox"/>
7. Has the applicant (including any of the partners, if a partnership; members or manager if a limited liability company; or officers, stockholders or directors if a corporation) or manager ever (in Colorado or any other state);		
(a) been denied an alcohol beverage license?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(b) had an alcohol beverage license suspended or revoked?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(c) had interest in another entity that had an alcohol beverage license suspended or revoked?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
If you answered yes to 7a, b or c, explain in detail on a separate sheet.		
8. Has a liquor license application (same license class), that was located within 500 feet of the proposed premises, been denied within the preceding two years? If "yes," explain in detail.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
9. Are the premises to be licensed within 500 feet of any public or private school that meets compulsory education requirements of Colorado law, or the principal campus of any college, university or seminary?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
10. Has a liquor or beer license ever been issued to the applicant (including any of the partners, if a partnership; members or manager if a limited liability company; or officers, stockholders or directors if a corporation)? If yes, identify the name of the business and list any current or former financial interest in said business including any loans to or from a licensee.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
11. Does the Applicant, as listed on line 2 of this application, have legal possession of the premises by virtue of ownership, lease or other arrangement?	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Ownership <input checked="" type="checkbox"/> Lease <input type="checkbox"/> Other (Explain in Detail)		
a. If leased, list name of landlord and tenant, and date of expiration, EXACTLY as they appear on the lease:		
Landlord VOONIA, LLC	Tenant GLACIER LIQUORS, LLC	Expires 2017
Attach a diagram and outline or designate the area to be licensed (including dimensions) which shows the bars, brewery, walls, partitions, entrances, exits and what each room shall be utilized for in this business. This diagram should be no larger than 8 1/2" X 11". (Doesn't have to be to scale)		
12. Who, besides the owners listed in this application (including persons, firms, partnerships, corporations, limited liability companies), will loan or give money, inventory, furniture or equipment to or for use in this business; or who will receive money from this business. Attach a separate sheet if necessary.		
NAME	DATE OF BIRTH	FEIN OR SSN
Attach copies of all notes and security instruments, and any written agreement, or details of any oral agreement, by which any person (including partnerships, corporations, limited liability companies, etc.) will share in the profit or gross proceeds of this establishment, and any agreement relating to the business which is contingent or conditional in any way by volume, profit, sales, giving of advice or consultation.		
13. Optional Premises or Hotel and Restaurant Licenses with Optional Premises	Yes	No
Has a local ordinance or resolution authorizing optional premises been adopted?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Number of separate Optional Premises areas requested. _____ (See License Fee Chart)		
14. Liquor Licensed Drug Store applicants, answer the following:	Yes	No
(a) Does the applicant for a Liquor Licensed Drug Store have a license issued by the Colorado Board of Pharmacy? COPY MUST BE ATTACHED.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
15. Club Liquor License applicants answer the following and attach:	Yes	No
(a) Is the applicant organization operated solely for a national, social, fraternal, patriotic, political or athletic purpose and not for pecuniary gain?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(b) Is the applicant organization a regularly chartered branch, lodge or chapter of a national organization which is operated solely for the object of a patriotic or fraternal organization or society, but not for pecuniary gain?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(c) How long has the club been incorporated? (Three years required) _____	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(d) Has applicant occupied an establishment for three years that was operated solely for the reasons stated above?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
16. Brew-Pub License or Vintner Restaurant Applicants answer the following:	Yes	No
(a) Has the applicant received or applied for a Federal Permit? (Copy of permit or application must be attached)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
17a. Name of Manager (for all on-premises applicants) _____ (If this is an application for a Hotel, Restaurant or Tavern License, the manager must also submit an Individual History Record (DR 8404-I).	Date of Birth	
17b. Does this manager act as the manager of, or have a financial interest in, any other liquor licensed establishment in the State of Colorado? If yes, provide name, type of license and account number.	Yes	No
	<input type="checkbox"/>	<input checked="" type="checkbox"/>
18. Tax Distraint Information. Does the applicant or any other person listed on this application and including its partners, officers, directors, stockholders, members (LLC) or managing members (LLC) and any other persons with a 10% or greater financial interest in the applicant currently have an outstanding tax distraint issued to them by the Colorado Department of Revenue? If yes, provide an explanation and include copies of any payment agreements.	Yes	No
	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Memo

To: Meghan Martinez, Town Clerk
From: Sergeant Gregg Lotspeich 977
CC: Gary R. Barbour, Chief of Police
Todd Norris, Commander
Date: 1/3/12
Re: Glacier Liquors License Renewal Memo



The background investigation into the renewal of the liquor license for Glacier Liquors is complete.

Based on the information supplied and the investigation completed, it is the opinion of the Frederick Police Department that the Liquor license's issuance be:



Approved



Denied

If you have any questions, please contact me at your convenience.

Sgt. Gregg Lotspeich
Frederick Police Department
333 5th St. P. O. Box 639
Frederick, Colorado 80530
720.382.5705
glotspeich@frederickco.gov

**LIQUOR OR 3.2 BEER LICENSE
RENEWAL APPLICATION**

BUCK WILDS SALOON
3415 RED HAWK LN
FREDERICK CO 80504

Fees Due	
Renewal Fee	\$500.00
Storage Permit \$100 x _____	_____
Optional Premise \$100 x _____	_____
Amount Due/Paid <u>500.00</u>	

Make check payable to: Colorado Department of Revenue.
The State may convert your check to a one-time electronic banking transaction. Your bank account may be debited as early as the same day received by the State. If converted, your check will not be returned. If your check is rejected due to insufficient or uncollected funds, the Department may collect the payment amount directly from your banking account electronically.

PLEASE VERIFY & UPDATE ALL INFORMATION BELOW

RETURN TO CITY OR COUNTY LICENSING AUTHORITY BY DUE DATE

Licensee Name RIDGE RUNNER ENDEAVORS LLC		DBA BUCK WILDS SALOON		
Liquor License # 43008160000	License Type Tavern (city)	Sales Tax License # 43008160000	Expiration Date 1/4/2013	Due Date 11/20/2012
Street Address 513 OAK ST FREDERICK CO 80530-7005				Phone Number (720) 839 8129
Mailing Address 3415 RED HAWK LN FREDERICK CO 80504				
Operating Manager Robert Trent	Date of Birth 10-16-63	Home Address 3415 RED HAWK LN FREDERICK CO		Phone Number 720-839-8129
<p>1. Do you have legal possession of the premises at the street address above? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO Is the premises owned or rented? <input type="checkbox"/> Owned <input checked="" type="checkbox"/> Rented* *If rented, expiration date of lease <u>Dec 2014</u></p> <p>2. Since the date of filing of the last annual application, has there been any change in financial interest (new notes, loans, owners, etc.) or organizational structure (addition or deletion of officers, directors, managing members or general partners)? If yes, explain in detail and attach a listing of all liquor businesses in which these new lenders, owners (other than licensed financial institutions), officers, directors, managing members, or general partners are materially interested. <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO NOTE TO CORPORATION, LIMITED LIABILITY COMPANY AND PARTNERSHIP APPLICANTS: If you have added or deleted any officers, directors, managing members, general partners or persons with 10% or more interest in your business, you must complete and return immediately to your Local Licensing Authority, Form DR 8177: Corporation, Limited Liability Company or Partnership Report of Changes, along with all supporting documentation and fees.</p> <p>3. Since the date of filing of the last annual application, has the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) been convicted of a crime? If yes, attach a detailed explanation. <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>4. Since the date of filing of the last annual application, has the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) been denied an alcohol beverage license, had an alcohol beverage license suspended or revoked, or had interest in any entity that had an alcohol beverage license denied, suspended or revoked? If yes, attach a detailed explanation. <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO</p> <p>5. Does the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) have a direct or indirect interest in any other Colorado liquor license, including loans to or from any licensee or interest in a loan to any licensee? If yes, attach a detailed explanation. <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO</p> <p>6. SOLE PROPRIETORSHIPS, HUSBAND-WIFE PARTNERSHIPS AND PARTNERS IN GENERAL PARTNERSHIPS: Each person must complete and sign the DR 4679: Affidavit – Restriction on Public Benefits (available online or by calling 303-205-2300) and attach a copy of their driver's license, state-issued ID or valid passport.</p>				

AFFIRMATION & CONSENT

I declare under penalty of perjury in the second degree that this application and all attachments are true, correct and complete to the best of my knowledge.

Type or Print Name of Applicant/Authorized Agent of Business Robert Trent	Title Owner / Manager
Signature Robert Trent	Date 11-12-12

REPORT & APPROVAL OF CITY OR COUNTY LICENSING AUTHORITY

The foregoing application has been examined and the premises, business conducted and character of the applicant are satisfactory, and we do hereby report that such license, if granted, will comply with the provisions of Title 12, Articles 46 and 47, C.R.S. THEREFORE THIS APPLICATION IS APPROVED.

Local Licensing Authority For		Date
Signature	Title	Attest

ATTACHMENT TO LIQUOR OR 3.2 BEER LICENSE RENEWAL APPLICATION

**This page must be completed and attached to your signed renewal application form.
 Failure to include this page with the application may result in your license not being renewed.**

Trade Name of Establishment Red Buck Wild's Saloon		State License Number 43-00816-0000	
1. Operating Manager Robert Trent	Home Address 3415 RED HAWK LN FREDERICK, CO		Date of Birth 10-16-63
2. Do you have legal possession of the premises for which this application for license is made? Are the premises owned or rented: <u>rented</u> If rented, expiration date of lease: <u>Dec 2014</u>			Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
3. Has there been any change in financial interest (new notes, loans, owners, etc.) since the last annual application? If yes, explain in detail and attach a listing of all liquor businesses in which these new lenders or owners, (other than licensed financial institutions) are materially interested.			Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
4. Since the date of filing of the last annual application, has the applicant, or any of its agents, owners, managers, principals, or lenders (other than licensed financial institutions), been convicted of a crime? If yes, attach a detailed explanation.			Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
5. Since the date of filing of the last annual application, has the applicant, or any of its agents, owners, managers, principals, or lenders (other than licensed financial institutions), been denied an alcoholic beverage license, had an alcoholic beverage license suspended or revoked, or had interest in any entity that had an alcoholic beverage license denied, suspended or revoked? If yes, attach a detailed explanation.			Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
6. Does the applicant, or any of its agents, owners, managers, principals, or lenders (other than licensed financial institutions), have a direct or indirect interest in any other Colorado liquor license (include loans to or from any licensee, or interest in a loan to any licensee)? If yes, attach a detailed explanation.			Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
7. Corporation or Limited Liability Company (LLC) or Partnership applicants must answer these questions. Since the date of filing of the last annual license application:			
(a) Are there, or have there been: any officers or directors; or managing members; or general partners added to or deleted from applicant for renewal of a 3.2 beer or liquor license?			Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
(b) Are there or have there been: any stockholders with 10% or more of the issued stock of the Corporation; or any members with 10% or more membership interest in the LLC; or any partners with 10% or more interest in the partnership added to or deleted from the applicant for renewal of a 3.2 beer or liquor license?			Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
(c) If Yes to (a) or (b), complete and attach Form DR 8177: Corporation, Limited Liability Company or Partnership Report of Changes, and all supporting documentation, and fees your Local Licensing Authority immediately.			
8. Sole proprietorships, Husband-Wife Partnerships or Partners in General Partnerships: <div style="text-align: center;">EVIDENCE OF LAWFUL PRESENCE</div> <p>Each person identified above must complete and sign the following affidavit. Please make additional copies if necessary. Each person must also provide a copy of their driver's license or state issued identification card.</p> <p>In lieu of form DR 4679, the undersigned swears or affirms under penalty of perjury under the laws of the State of Colorado that (check one):</p> <p><input checked="" type="checkbox"/> I am a United States Citizen</p> <p><input type="checkbox"/> I am not a United States Citizen but I am a Permanent Resident of the United States</p> <p><input type="checkbox"/> I am not a United States Citizen but I am lawfully present in the United States pursuant to Federal Law</p> <p><input type="checkbox"/> I am a foreign national not physically present in the United States</p> <p>I understand that this sworn statement is required by law because I have applied for a public benefit. I understand that state law requires me to provide proof that I am lawfully present in the United States prior to receipt of this public benefit. I further acknowledge that making a false, or fraudulent statement or misrepresentation in this sworn affidavit is punishable under the criminal laws of Colorado Revised Statute 18-8-503 and it shall constitute a separate criminal offense each time a public benefit is fraudulently received.</p>			
Signature Robert Trent		Printed name Robert Trent	
		Date 11-12-12	



TOWN OF FREDERICK

401 LOCUST STREET • P.O. BOX 425 • FREDERICK, CO 80530-0435
PHONE: (720) 382-5500 • FAX: (720) 382-5520

AUTHORIZATION AND CONSENT TO RELEASE INFORMATION

Applicants and Managers- Complete (please print) and Sign Below

Name of Individual:

Robert L Trent

Position:

Owner

Trade Name of Establishment:

Buck Wilds Saloon

Address of Establishment:

513 Oak St, Frederick CO

Statement Applies to Applicant Only:

I, as an applicant for the above referenced liquor/ beer license, hereby authorize release of information pertaining to my financial qualifications in conjunction with my application to operate a liquor licensed establishment. I hereby consent to and authorize the release of any and all personal or business books, records, checkbooks, bank statements and records, financial data, balance sheets, income accounts, forms and all other applicable data and information relative to my credit standing and business reputation by any person or entity having possession or control thereof to any person presenting a signed copy of this Authorization and Consent to Release Information form, or a true copy of a signed copy thereof, upon the express condition, however, that said release is limited to an investigation conducted pursuant to the aforesaid licensing and operation there under, but this consent shall continue to operate so long as above-named licensee shall hold said license, if granted and for the term or terms of any renewals or extension thereof.

Statements Apply to Applicant and Managers:

As an applicant for a Liquor/ Beer License or a Manager's Registration before the Town of Frederick Local Licensing Authority, I am required to furnish information concerning my moral, educational and mental qualifications. In this regard, I hereby authorize the Frederick Police Department to make any and all appropriate inquiries regarding the above qualifications. Moreover, I authorize those people or organizations selected by the Frederick Police Department to release any and all information of a confidential and privileged nature.

I hereby release you, your organization or others from any liability or damage, which may result from furnishing the information requested. I further authorize the Frederick Police Department and Local Licensing Authority to discuss, in a public forum, any and all findings in regard to my moral, educational, and character qualifications, should I wish to proceed to that stage of the process with my application. I understand that any information or records obtained from you or by the Town may become public records available upon request by the public.



TOWN OF FREDERICK

401 LOCUST STREET • P.O. BOX 425 • FREDERICK, CO 80530-0435
PHONE: (720) 382-5500 • FAX: (720) 382-5520

AUTHORIZATION AND CONSENT TO RELEASE INFORMATION

Page 2

Signature: _____

Robert Trent

Date: _____

12-4-12

Subscribed and sworn to before me by: _____

Robert Trent

(seal)

In the County of Weld, State of Colorado, this 4th day of December, 2012.

Notary Public: _____

Meghan C. Martinez

My Commission Expires: _____

10/13/13

MEGHAN C MARTINEZ, MS
NOTARY PUBLIC - STATE OF COLORADO

Memo



To: Gary R. Barbour, Police Chief
Meghan Martinez, Town Clerk
From: Sergeant Gregg Lotspeich 977
CC: Commander Todd Norris
Date: January 3, 2013
Re: Buck Wild's Saloon Liquor License Renewal.

The background investigation into the application for the renewal of the liquor license for Buck Wild's Saloon, with Robert L. Trent Jr. as the licensee, is complete.

Based on the information supplied and the investigation completed to date, it is the opinion of the Frederick Police Department that the matter be deferred to the Local Liquor Authority for review and action:



Approved



Denied

If you have any questions, please feel free to contact me at your convenience.

Gregg Lotspeich 977
Detective Sergeant
Frederick Police Department
333 5th St. P. O. BOX 639
Frederick, Colorado 80530
Phone: (720) 382-5700 FAX: (303) 833-2516
Email: glotspeich@frederickco.gov

**BEFORE THE LIQUOR LICENSING AUTHORITY
TOWN OF FREDERICK, STATE OF COLORADO**

IN THE MATTER OF:

RIDGE RUNNER ENDEAVORS, LLC

D/B/A BUCK WILD'S SALOON

APPLICATION

513 OAK STREET

FREDERICK, COLORADO

FINDINGS AND ORDER

RE:

RENEWAL

THIS MATTER came before the Frederick Liquor Licensing Authority on January 8, 2013 for consideration of the application for renewal of tavern license submitted by Ridge Runner Endeavor, LLC. The Licensee was present and proceeded *pro se*. The Liquor Authority was represented by Town Prosecuting Attorney, Kristin N. Brown.

The Local Licensing Authority reviewed the renewal application and the Renewal Background Investigation Report completed by Sgt. Lotspeich of the Frederick Police Department.

The Liquor Authority, having heard and received the statements and representations of the parties, makes the following Findings and Order:

FINDINGS OF FACT

1) Licensee filed the application for renewal of tavern license with the Frederick Town Clerk's Office on November 12, 2012. All fees related to the renewal application have been paid in full.

2) That over the past year there has been 14 incidents at the licensed premises or involving the licensee.

3) That the Local Licensing Authority is concerned about the high number of incidents at the licensed premises involving activity and acts of disorderly conduct, and other disturbances and activities offensive to the senses of the average citizen.

4) That the Local Licensing Authority is concerned about the apparent serving and/or loitering of visibly intoxicated persons at the licensed premises.

5) That the Local Licensing Authority is concerned about the failure of licensee or his staff to immediately notify law enforcement of any disturbance, as required by Frederick Municipal Code §10-139.

ORDER

Upon discussion and consideration, based upon the findings of fact set forth herein, the Local Authority hereby GRANTS the application for a renewal of the Tavern License of Ridge Runner Endeavors, LLC, conditioned on the following items:

1) Licensee and all employees involved in the sale or service of alcohol beverages (including any doorman, security staff) will complete the alcohol training education program offered by the Frederick Police Department. Such training shall be completed by every new hire at the next available training session.

2) Licensee, employees and agents of licensee, shall conduct the licensed premises in a decent, orderly and respectable manner, and not allow on the licensed premises the serving or loitering of a visibly intoxicated person.

3) Licensee, employees and agents of licensee shall not knowingly permit any activity or acts of disorderly conduct (as defined at CRS §18-9-106), nor shall licensee permit rowdiness, undue noise, or other disturbances or activities offensive to the senses of the average citizen, or to the residents of the neighborhood in which the licensed premises is located.

4) Licensee, employees and agents of licensee shall comply with Frederick Municipal Code §10-139 and immediately report any disturbance or act of disorderly conduct to law enforcement.

Failure by licensee to comply with any condition of the renewal of license, as set forth above, may result in the Liquor Authority setting aside the order of renewal of the tavern license. Further, any violation of any provision of the Colorado Liquor Code or Regulation, or related provisions of the Frederick Municipal Code, by the licensee, or any employee or agent, may result in the issuance of a Show Cause Notice, and potential suspension or revocation of the tavern license.

SO ORDERED this _____ day of January, 2013.

FREDERICK LIQUOR LICENSING AUTHORITY

By _____
Tony Carey, Chair



TOWN OF FREDERICK

Board of Trustees

Agenda Memorandum

Jim Wollack, Mayor Pro Tem
Rafer Burnham, Trustee
Amy Schiers, Trustee

Tony Carey, Mayor

Laura Brown, Trustee
Gavin Payne, Trustee
Fred Skates, Trustee

AN ORDINANCE OF THE TOWN OF FREDERICK, COLORADO, ENACTING CHAPTER 6, ARTICLE III, SECTION 6-76, OF THE FREDERICK MUNICIPAL CODE, ENTITLED "ALCOHOL BEVERAGE TASTINGS."

Agenda Date: Town Board Meeting - January 22, 2013

Attachments: a. Proposed Ordinance

Finance Review : N/A
Finance Director

Submitted by: Kristin N. Brown
Town Prosecutor

Approved for Presentation: 
Town Manager

Summary Statement:

This ordinance enacts a procedure by which a licensed retail liquor store or liquor-licensed drug store may conduct "tastings" on the licensed premises.

Detail of Issue/Request:

The Colorado Liquor Code, at C.R.S. §12-47-301(10), authorizes local governments to enact provisions that allow liquor tastings at a licensed retail liquor store or liquor-licensed drug store. Several such license holders have inquired of the Town Clerk's office as to whether a "tasting license" is available within the town. At this time such a license is not available because there is no local legislation authorizing the practice.

The draft ordinance mirrors the statutory provisions related to liquor tastings (which includes tastings of wine, beer in one ounce serving size, or spirituous liquors in one-half ounce servings). The statute allows a local government to establish more strict guidelines related to the number of tastings permitted per year (statute and draft ordinance allow tastings on no more than 100 days per year), the days on which tastings may occur (statute and draft ordinance allow tastings on four out of six days a week

between Monday and Saturday), or the number of hours each tasting may last (statute and draft ordinance allow tastings between 11 a.m. and 7 p.m.). Something for the Board's consideration

Finally, the Board may consider authorizing the Town Clerk's office to process and grant any application where the application fee has been paid in full and there have been no liquor related violations at the establishment in the past one year (two years?). This will streamline the process a bit. In the event there is a concern with the application, or the applicant has had liquor related violations in the past one or two years (at Board's discretion), then the application can be brought before the Liquor Authority for consideration.

Legal/Political Considerations:

None.

Alternatives/Options:

Vote to adopt ordinance, or not

Financial Considerations:

Not applicable.

Staff Recommendation:

Staff recommends the Board of Trustees adopt the proposed ordinance.

**TOWN OF FREDERICK, COLORADO
ORDINANCE NO. 1124**

**AN ORDINANCE OF THE TOWN OF FREDERICK, COLORADO,
ENACTING CHAPTER 6, ARTICLE III, SECTION 6-76, OF THE
FREDERICK MUNICIPAL CODE, ENTITLED “ALCOHOL BEVERAGE
TASTINGS.”**

**NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF
THE TOWN OF FREDERICK, AS FOLLOWS:**

WHEREAS, pursuant to C.R.S. §12-47-301(10), the Town of Frederick has authority to authorize beverage tastings for licensed retail liquor stores and liquor- licensed drug stores within the Town; and

WHEREAS, the Frederick Board of Trustees desires to authorize alcohol beverage tastings at licensed retail liquor stores and liquor licensed drug stores, pursuant to the provisions of this ordinance.

Section 1: Chapter 6, Article III, Section 6-76 of the Frederick Municipal Code is hereby enacted to read as follows:

Sec. 6-76. Alcohol beverage tastings.

(a) A retail liquor store or liquor-licensed drug store licensee who wishes to conduct tastings may submit an application or application renewal to the local licensing authority. The application form shall be provided by the Town Clerk, and a reasonable licensing fee shall be paid, as established by the local licensing authority. The local licensing authority may reject the application if the applicant fails to establish that he or she is able to conduct tastings without violating the provisions of this section or creating a public safety risk to the neighborhood. In addition, the local licensing authority may reject an application if the applicant has a history of liquor related violations, has failed to comply with conditions on his or her license as ordered by the local licensing authority, or for good cause as specified by the local licensing authority.

(b) Tastings shall be subject to the following limitations:

(1) Tastings shall be conducted only by a person who has completed the server training program offered by the Frederick Police Department within a year prior to the schedule tasting, and who is either a retail liquor store licensee or a liquor-licensed drug store licensee, or an employee of such licensee, and only on the licensee’s licensed premises.

(2) The alcohol used in the tastings shall be purchased through licensed wholesaler, licensed brew pub, or winery licensed pursuant to C.R.S. §12-47-403, as amended, at a cost that is not less than the laid-in cost of such alcohol.

- (3) The size of an individual alcohol sample shall not exceed one ounce of malt or vinous liquor or one-half ounce of spirituous liquor.
 - (4) Tastings shall not exceed a total of five hours in duration per day, which need not be consecutive.
 - (5) Tastings shall be conducted only during the operating hours in which the licensee on whose premises the tastings occur is permitted to sell alcohol beverages, and in no case earlier than 11 a.m. or later than 7 p.m.
 - (6) The licensee shall prohibit patrons from leaving the licensed premises with an unconsumed sample.
 - (7) The licensee shall promptly remove all open and unconsumed alcohol beverage samples from the licensed premises or shall destroy the samples immediately following the completion of the tasting.
 - (8) The licensee shall not serve a person who is under twenty-one years of age or who is visibly intoxicated.
 - (9) The licensee shall not serve more than four individual samples to a patron during a tasting.
 - (10) Alcohol samples shall be in open containers and shall be provided to a patron free of charged.
 - (11) Tastings may occur on no more than four of the six days from a Monday to the following Saturday, not to exceed one hundred days per year.
 - (12) No manufacturer of spirituous or vinous liquors shall induce a licensee through free goods or financial or in-kind assistance to favor the manufacturer's products being sampled at a tasting. The licensee shall bear the financial and all other responsibility for a tasting.
- (b) A violation of a limitation specified in this Section or of C.R.S. §12-47-801 by a retail liquor store or liquor-licensed drug store licensee, whether by his or her employees, agents, or otherwise, shall be the responsibility of the retail liquor store or liquor-licensed drug store licensee who is conducting the tasting.
 - (c) A retail liquor store or liquor-licensed drug store licensee who is conducting a tasting shall be subject to the same revocation, suspension and enforcement provisions as otherwise apply to the licensee.

Section 2: Severability. If any part, section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such invalidity shall not affect the validity of the remaining sections of the ordinance. The Town Board hereby declares that it would have passed the ordinance including each part, section, subsection, sentence, clause or phrase thereof, irrespective of the fact that one or more parts, sections, subsections, sentence, clauses or phrases

be declared invalid.

Section 3: Repealer. All ordinances or resolutions, or parts thereof, in conflict with this ordinance are hereby repealed, provided that such repealer shall not repeal the repealer clauses of such ordinance nor revive any ordinance thereby.

INTRODUCED, READ, PASSED, ADOPTED AND ORDERED PUBLISHED THIS
22nd day of January, 2013.

TOWN OF FREDERICK

By: _____
Tony Carey, Mayor

ATTEST:

By _____
Meghan C. Martinez, Town Clerk



TOWN OF FREDERICK

Board of Trustees

Action Memorandum

Jim Wollack, Mayor Pro Tem
Rafer Burnham, Trustee
Amy Schiers, Trustee

Tony Carey, Mayor

Laura Brown, Trustee
Gavin Payne, Trustee
Fred Skates, Trustee

4th ADDENDUM IGA WITH THE CARBON VALLEY RECREATION DISTRICT TO SUPPORT THE CARBON VALLEY SENIORS


Agenda Date: Town Board Meeting - January 22, 2013

Attachments: a. 4th Addendum to the IGA


Fiscal Note: The item presented for consideration is budgeted for FY 2013.



Finance Director

Submitted by: 

Town Manager

Approved for Presentation: 

Town Manager

☐ Quasi-Judicial

☐ Legislative

☒ Administrative

Summary Statement:

Presented is the adoption of the 4th addendum to the IGA with CVRD that provides assistance to the Senior Center operations and programming. The agreement is for the 2013 calendar year.

Detail of Issue/Request:

Historically, the Town of Frederick has been providing funding to the CVRD Senior Center Operations and Programming for at least the past three (3) years. Prior to 2012, the amount contributed was \$8,000.00. In 2012, the amount of financial support was increased by \$4,000 and this additional funding was exclusively allocated toward programming for the Seniors'. In September 2012, I met with the CVRD Executive Director about plans for a 2013 IGA for the Senior Center. During that time I expressed that I felt we would be supportive, but better accountability would need to be included, the details of which were not discussed. In October, I received an approved 4th Addendum IGA by the

CVRD Board which I had no input. On behalf of the Town I provided detailed comments of requested revisions. I received two more versions after submitting my comments, and my requests were never incorporated into a new 4th IGA.

My primary concern when it is all said and done is that an IGA stands for an Intergovernmental Agreement. The foundation of an IGA and from basis of the term one would assume that there were discussions and if necessary, negotiations that would go into crafting an agreement whereby the Town of Frederick is providing \$12,000 of subsidies to this program. I am 100% supportive of the Seniors in Frederick, but the spirit of the agreement and the terms associated with it were dictated to the Town without the luxury or opportunity to provide input into the agreement, all while the Town contributing \$12,000. The other participating communities have signed off on the agreement you have for consideration tonight without any of my requested changes recognized. After sending the requested changes/comments to Renee three (3) times, I have given up recognizing that at this point my time is better spent elsewhere on a project where Town feedback is appreciated and welcomed in partnership. I have however provided to Renee a fourth (4th) copy to her which was sent via the USPS mail, certified return receipt and expressed in a memo that the proposed changes should be the starting point for an IGA if considered in 2014.

Legal/Political Considerations:

NA

Alternatives/Options:

Deny approval of the 4th Addendum IGA and request that CVRD draft a separate and negotiated agreement with the Town of Frederick in good faith.

Financial Considerations:

The funding for this request has been budgeted at \$12,000.

Staff Recommendation:

Staff recommends passing the resolution to adopt the 2013 Senior IGA.

FOURTH ADDENDUM TO INTERGOVERNMENTAL AGREEMENT

This Fourth Addendum to the Intergovernmental Agreement ("Fourth Addendum") is entered this 14th day of Nov., 2012 between the CARBON VALLEY PARK AND RECREATION DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado ("District") and the CITY OF DAcono, a municipality and political subdivision of the State of Colorado ("Dacono"), and TOWN OF FIRESTONE, a municipality and political subdivision of the State of Colorado ("Firestone"), and the TOWN OF FREDERICK, a municipality of political subdivision of the State of Colorado ("Frederick"), collectively referred to as "Parties" or in the singular "Party".

WHEREAS, the District, the City of Dacono and the Town of Frederick previously entered into an Intergovernmental Agreement dated November 30, 2006 ("Seniors IGA"), setting forth certain agreements regarding the provision of recreation services to senior citizens; and

WHEREAS, Firestone became a party to the Seniors IGA pursuant to the First Addendum to Intergovernmental Agreement dated December 9, 2008; and

WHEREAS, pursuant to the Second Addendum to Intergovernmental Agreement dated December 31, 2009, the Seniors IGA was renewed for an additional three years and is set to expire on December 31, 2012; and

WHEREAS, pursuant to the Third Addendum to Intergovernmental Agreement dated April 16, 2012 for fiscal year 2012, the District has requested that the Parties increase their financial contribution under the Seniors IGA by \$4,000, from \$8,000 to \$12,000; and

WHEREAS, the District and the Parties desire to enter into this Fourth Addendum to set forth their understanding regarding the Parties 2013 financial contribution;

NOW, THEREFORE, in consideration of the terms and conditions of this Fourth Addendum, the sufficiency of which is acknowledged, the District and the Parties agree as follows:

1. Increased Contribution; Use of Funds. For fiscal year 2013, Parties agree to maintain the increased funding of its financial contribution under the Seniors IGA by \$4,000, from \$8,000 to \$12,000. The Parties shall pay the 2013 contribution to the District on or before April 15, 2013. The Parties 2013 contribution shall be used solely for the purposes permitted under the Seniors IGA, with the additional \$4,000 used solely for funding of direct expenses for senior programs and not for staff costs or administrative overhead.

2. Reporting. In addition to the current reporting requirements of the Seniors IGA, the District agrees to provide to the Parties prior to November 1, 2013 a report current through September 30, 2013 detailing the District's senior programs, services and activities. Such report shall contain, at a minimum (a) the information required by the Seniors IGA; (b) a list of seniors programs, services and activities provided in 2013; (c) statistical information regarding residency of users, organized on a program-, service- and activity-specific basis; (d) current financial information detailing sources of funds, revenues and expenditures for all senior programs, services and activities, prepared in accordance with generally accepted governmental accounting practices; and (e) additional information as necessary detailing the use of the Parties funds contributed pursuant to the Seniors IGA.

3. Ratification. The Parties agree that the Seniors IGA as herein modified remains in full force and effect in accordance with its terms. In the event of any conflict, the provisions of this Fourth Addendum shall control.

IN WITNESS WHEREOF, Dacono, Firestone, Frederick, and the District have executed this Fourth Addendum effective the date set forth above.

CITY OF DACONO, COLORADO

By: _____

Charles Sigman, Mayor

TOWN OF FIRESTONE, COLORADO

By: _____

Chad Auer, Mayor

ATTEST:

Valerie Taylor, City Clerk

ATTEST:

Rebecca Toberman, Town Clerk



Date

12/10/12



Date

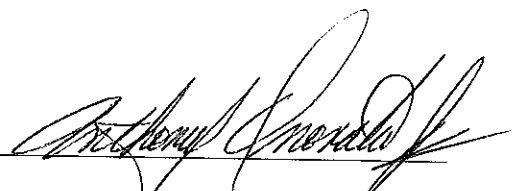
12-12-12

TOWN OF FREDERICK, COLORADO

CARBON VALLEY PARK AND
RECREATION DISTRICT, COLORADO

By: _____

Tony Carey, Mayor

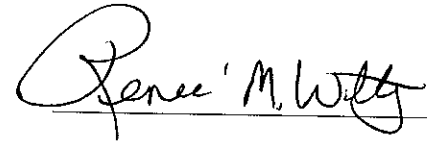
By:  _____

Anthony Onorato Jr., Board President

ATTEST:

Meghan Martinez, Town Clerk

ATTEST:

 _____
Renee' Witty, Board Secretary

Date

12/12/12

Date



TOWN OF FREDERICK

Board of Trustees

Action Memorandum

Jim Wollack, Mayor Pro Tem
Rafer Burnham, Trustee
Amy Schiers, Trustee

Tony Carey, Mayor

Laura Brown, Trustee
Gavin Payne, Trustee
Fred Skates, Trustee


INCENTIVES FOR LONGMONT UNITED HOSPITAL PHASE 1

Agenda Date: Town Board Meeting - January 22, 2013

Attachments:

- a. Incentive Agreement for LUH
- b. Resolution Approving Agreement

Finance Review:



Finance Director

Submitted by:



Town Manager

Approved for Presentation:



Town Manager

☐ Quasi-Judicial

☐ Legislative

☒ Administrative

Summary Statement:

Presented for consideration is an incentive for Longmont United Hospital to waive their plan review fees by 50%.

Detail of Issue/Request:

In September 2012 the Board discussed providing incentives to Longmont United Hospital for their planned Phase 1 urgent care facility. Based on discussion and negotiations with the LUH representative we have agreed upon a waiver of 50% of the plan review fee associated with the building construction permit.

Legal/Political Considerations:

NA

Alternatives/Options:

Decide not to provide an incentive to LUH.

Financial Considerations:

The estimated cost for the plan review fee is \$60,000, resulting in a reduction of approximately \$30,000 from the fees cost.

Staff Recommendation:

Staff recommends passing the resolution which provides the incentive.

AGREEMENT

This Agreement made and entered into this ____ day of _____, 2013 by and between the Town of Frederick, a Colorado municipal corporation, hereinafter referred to as "Town", and Longmont United Hospital, a Colorado nonprofit corporation hereinafter referred to as "LUH".

WHEREAS, C.R.S. §31-15-903(1)(a) provides that the health, safety and welfare of the people of Colorado are dependent upon attracting new private enterprise; and

WHEREAS, C.R.S. §31-15-903(1)(a) further provides that incentives are often necessary in order to attract private enterprise and that such incentives stimulate economic development and result in the creation and maintenance of new jobs; and

WHEREAS, the Town is willing to waive certain fees in order to attract LUH to expand in the Town of Frederick.

NOW, THEREFORE, the Town agrees to the following:

1. The Town agrees to waive 50% of the Construction and Plan Review fees estimated to be valued at \$60,000 provided that a building permit is issued by the Town no later than March 31, 2013.

2. This Agreement is not assignable without the written approval of the Town.

3. Any notices required to be given under this Agreement shall be as follows:

a. The Town Manager, Town of Frederick, P.O. Box 435, Frederick, CO 80530.

b. Mitchell C. Carson, President, Longmont United Hospital, P.O. Box 1659, Longmont, Colorado 80502

TOWN OF FREDERICK

LONGMONT UNITED HOSPITAL.

By _____
Tony Carey, Mayor

By _____
Mitchell C. Carson President

ATTEST:

Meghan C. Martinez, Town Clerk

**TOWN OF FREDERICK, COLORADO
RESOLUTION NO. 13-R-4**

**A RESOLUTION OF THE TOWN OF FREDERICK, COLORADO,
APPROVING AN AGREEMENT FOR PROVIDING CERTAIN INCENTIVES TO
LONGMONT UNITED HOSPITAL**

WHEREAS, the Town of Frederick, Colorado, (Town) pursuant to Colorado statute, is vested with the authority to administer the affairs of the Town; and Longmont United Hospital (LUH); and

WHEREAS, the Board of Trustees has been presented with an Agreement for incentive payments between the Town and LUH, the terms and conditions being stated in said Agreement; and

WHEREAS, after review, the Board of Trustees deems it advisable to approve said Agreement, a copy of which is attached hereto and incorporated herein by this reference.

NOW, THEREFORE, be it resolved by the Board of Trustees of the Town of Frederick that the Agreement waiving a certain portion of the Construction and Plan Review fees as set forth in the Agreement be and is hereby approved.

Section 1. Effective Date. This resolution shall become effective immediately upon adoption.

Section 2. Repealer. All resolutions, or parts thereof, in conflict with this resolution are hereby repealed, provided that such repealer shall not repeal the repealer clauses of such resolution nor revive any resolution thereby.

Section 3. Certification. The Town Clerk shall certify to the passage of this resolution and make not less than one copy of the adopted resolution available for inspection by the public during regular business hours.

**INTRODUCED, READ, PASSED AND ADOPTED THIS ____ DAY OF
JANUARY, 2013.**

ATTEST:

TOWN OF FREDERICK

By _____
Meghan C. Martinez, Town Clerk

By _____
Tony Carey, Mayor



TOWN OF FREDERICK

Board of Trustees

Action Memorandum

Jim Wollack, Mayor Pro Tem
Rafer Burnham, Trustee
Amy Schiers, Trustee

Tony Carey, Mayor

Laura Brown, Trustee
Gavin Payne, Trustee
Fred Skates, Trustee

Indian Peaks Medical Center Request to Postpone Undergrounding of the Overhead Electrical Line to the Next Phase of Site Development

Agenda Date: Town Board Meeting - January 22, 2013

Attachments:

- a. Site plan
- b. Lansons Farm MOAPI

Fiscal Note: (see note below) _____

Finance Director

Submitted by: Mohammed Said
Civil Engineer

Approved for Presentation: 
Town Manager

☐ Quasi-Judicial

☐ Legislative

☒ Administrative

Summary Statement:

The developer of Indian Peaks Medical Center is requesting to postpone the undergrounding of the existing overhead power line adjacent to the front of lot along State Highway 52 to the future phase of the medical center expansion. The request is due to financial burden. The hospital has other public improvement obligations to CWCWD and CDOT beyond those listed in Exhibit B. They are also requesting to use a Certificate of Deposit (CD) for the public improvements security.

Detail of Issue/Request:

Indian Peaks Medical Center is approximately 69 acre of undeveloped farmland and native grasses. The phase 1 site development will be approximately 8.3 acres in the southeast corner of the lots. Phase 1 project consists of a 36,000 SF two-story steel-framed building with associated parking, drive lanes, landscaping and stormwater detention with site access provided off Colorado State Highway 52.

The site is located at the northwest corner of the intersection of Colorado State Highway 52 and Silver Birch Blvd (WCR 11). Lanson Farm Subdivision Final Plat (site of the Indian Peaks Medical Center) was approved on August 31, 2009. Undergrounding of existing overhead electrical lines along Colorado State Highway 52 on the Indian Peaks Medical Center site is required per Town policy.

In addition to the Town of Frederick public improvements listed in Exhibit B, the hospital has other public improvement obligations. Payment to CWCWD to bore underneath Colorado State Highway 52 to bring the waterline from south of SH 52 at two different location and installing master meters on the site hospital property will total approximately \$250,000.00. Also the hospital has to construct the main and emergency access to the site from SH 52.

The developer of Indian Peaks Medical Center is proposing to use a CD as security for the public improvements. Staff and the Town Attorney have reviewed this proposal and discussed it with the Town's auditor. Staff is of the opinion that using a CD is acceptable as long as the amount of the CD is increased to 125% of the total cost to account for a potential early withdrawal of the CD.

Legal/Political Considerations:

The MOAPI has been reviewed by the Town Attorney.

Alternatives/Options:

Require the developer to underground the overhead electrical lines along State Highway 52 on their property with the current, phase 1 of the site development.

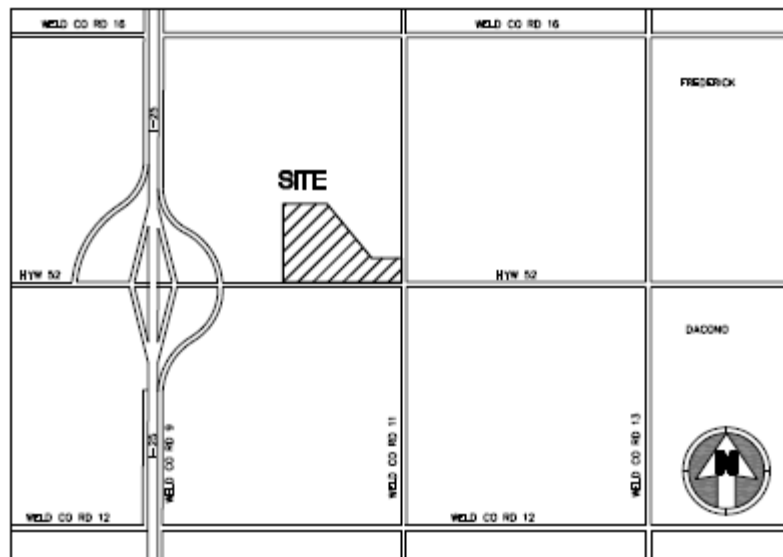
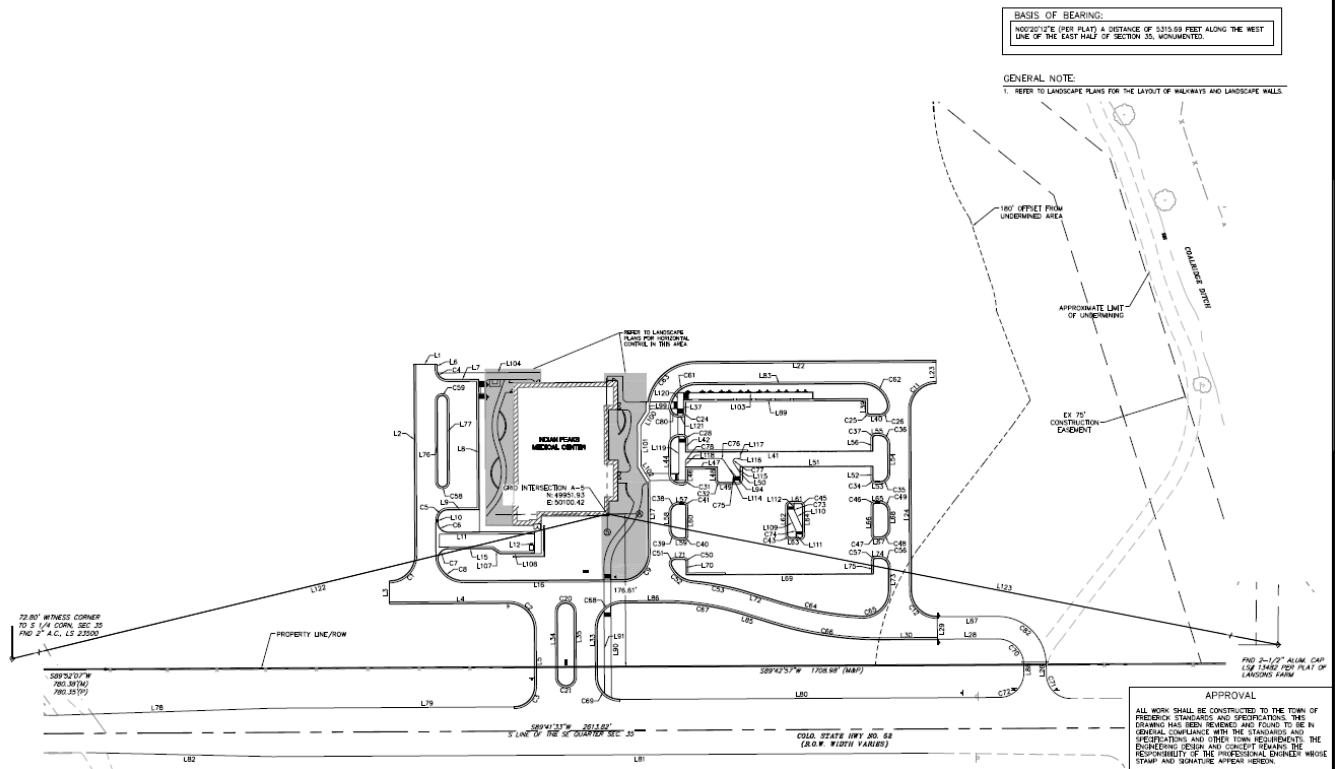
Financial Considerations:

The cost of undergrounding of overhead electrical line is estimate to be \$250,000.

Staff Recommendation:

Staff recommends that the Board make a motion to approve the attached MOAPI, including the use of a CD as financial security for public improvements and the postponement of undergrounding the overhead electrical line to the next phase of site development on the Indian Peaks Medical Center.

Indian Peaks Medical Center – Phase 1



VICINITY MAP
NOT TO SCALE

**LANSONS FARM SUBDIVISION AMENDMENT
(AKA INDIAN PEAKS MEDICAL CENTER)
MEMORANDUM OF AGREEMENT FOR PUBLIC IMPROVEMENTS**

THIS AGREEMENT is made and entered this 22nd day of January 2013 by and between the TOWN of Frederick, a Colorado municipal corporation, whose address is P.O. Box 435, Frederick, Colorado ("TOWN"), and CARBON VALLEY HEALTH CARE HOLDINGS CORPORATION, a Colorado corporation, whose address is 1950 MOUNTAIN VIEW AVENUE LONGMONT, COLORADO 80501, ("DEVELOPER").

WHEREAS, DEVELOPER has submitted a Final Plat for the LANSONS FARM SUBDIVISION AMENDMENT (AKA INDIAN PEAKS MEDICAL CENTER) ("SUBDIVISION" or "DEVELOPMENT"), attached as "Exhibit A" and incorporated herein by reference, which the Planning Commission and TOWN Board of Trustees have reviewed and approved; and

WHEREAS, additional filings are anticipated, and this agreement applies only to LANSONS FARM SUBDIVISION (Indian Peak Medical Center Phase 1 ; and

WHEREAS, the subdivision regulations of the TOWN requires that the DEVELOPER enter into a Subdivision Agreement hereafter called a Memorandum of Agreement for Public Improvements ("AGREEMENT" or "MOAPI") with the TOWN concerning public improvements related to the Development detailed and attached as the "Schedule of Improvements, Exhibit B," hereinafter called "Exhibit B" and incorporated herein by reference; and

WHEREAS, the parties have modified this standard AGREEMENT as indicated by the addition of certain special provisions, if any, in Exhibit F; and

WHEREAS, the TOWN and the DEVELOPER agree that such public improvements are directly related to and generated by development intended to occur within the SUBDIVISION and that no taking thereby will occur requiring any compensation.

NOW, THEREFORE, in consideration of the foregoing, the parties hereto promise, covenant and agree as follows:

1. GENERAL CONDITIONS.

1.1 Definitions:

- a.) Accept:** The Town accepts public improvements after they have been constructed and inspected. Conditional Acceptance and Final Acceptance are the times when the warranty period begins and when the warranty period

ends. Conditional and Final Acceptance by the Town must be in writing to be valid, as described in Sections 1.8, 1.9, and 1.10.

- b.) Approve:** The Town will review and approve construction plans and the general design of engineered structures to ensure that they are in compliance with the Town's Design Standards and Construction Specifications. However, the Town does not design these structures and any failure due to faulty engineering is the liability of the design engineer who stamped the plans.
- c.) Major Improvements:** Streets, including curb, gutter and sidewalk, and concrete structures that are built in place, such as detention pond outlet structures and box culverts.

1.2 Development Obligation. DEVELOPER shall be responsible for performance of the covenants set forth herein. DEVELOPER agrees to construct, build, install and develop all improvements required by this AGREEMENT, including but not limited to all water system improvements, sanitary sewer collection lines, sanitary sewer lift stations, storm sewer lines and catch basins, storm drainage swales, storm drainage detention ponds and other improvements, streets, curbs, gutter, sidewalks, landscaping, pedestrian and non-motorized paths and trails, street median/boulevard and subdivision entryway landscaping, street lighting, park improvements, irrigation systems, gas services, electric services, telephone services, cable television services and any other improvements constructed in relation to the development of Lansons Farm Subdivision Amendment aka Indian Peak Medical Center Phase 1 in complete conformity with the TOWN's construction standards and specifications and with the construction plans and drawings that have been reviewed and Approved by the TOWN.

1.3 Engineering and Surveying Services. DEVELOPER agrees to furnish, at its expense, all necessary engineering and surveying services relating to the design and construction of the Development and the public improvements identified in "Exhibit B," attached and incorporated herein by this reference. The engineering services shall be performed by or under the supervision of a Registered Professional Engineer licensed by the State of Colorado in accordance with the applicable Colorado law; and except as otherwise provided in this AGREEMENT, shall conform to the standards and specifications for public improvements as established and approved by the TOWN as of the date of submittal to the TOWN.

The surveying services shall be performed by or under the supervision of a Registered Land Surveyor, licensed by the State of Colorado in accordance with the applicable Colorado law and shall include, but not be limited to, the monumentation of the subdivision as provided by law.

1.4 Construction Standards. DEVELOPER shall construct all improvements required by this AGREEMENT, according to plans and specifications reviewed and accepted in writing by the TOWN or by the utility providing the service, and with the approved plat, and in full conformity with the TOWN's construction specifications applicable at the time of construction plan acceptance. Such acceptance shall continue in effect for one (1) year from the date of acceptance. If the DEVELOPER commences or performs any construction after such one (1) year period, the DEVELOPER shall resubmit the project construction plans to the TOWN for reexamination. The TOWN may require the DEVELOPER to comply with the TOWN standards and specifications that are in effect at the time of resubmittal.

1.5 Development Coordination. Unless specifically provided in this AGREEMENT to the contrary, all submittals to the TOWN shall be made to the TOWN Clerk with a copy to the TOWN Engineer, as may be designated by the TOWN. The TOWN Engineer, or the Engineer's designee shall render those acceptances required of the TOWN in connection with this AGREEMENT, except those requiring formal action by the Board of Trustees in the form of a resolution or ordinance, and shall have general responsibility for coordinating development with DEVELOPER.

1.6 Plan Submission and Acceptance.

- (a) DEVELOPER shall furnish the TOWN complete plans for public improvements for the Development, and obtain written acceptance of such plans by the TOWN before the commencement of any construction work thereon. DEVELOPER shall submit all sanitary sewer plans to and shall acquire the written acceptance by the St. Vrain Sanitation District before the commencement of any construction work on such improvements. Acceptance shall be indicated by the signature of the appropriate district representative on each drawing in the plans set containing sanitary sewer and storm drainage facilities.
- (b) The TOWN shall issue its written acceptance or disapproval of public improvement plans as expeditiously as reasonably possible. Said acceptance or disapproval shall be based upon the standards and specifications for public improvements as established by the TOWN, and the TOWN shall notify DEVELOPER of all deficiencies that must be corrected before plan acceptance. All deficiencies shall be corrected and DEVELOPER shall resubmit the plans for review and acceptance by the TOWN before the construction of any improvements.

- (c) DEVELOPER shall submit all plans for public improvements as paper documents and by acceptable electronic transfer, AutoCAD™ drawing files (release 14, or newer). All written documents shall be submitted as paper documents and by acceptable electronic transfer, as word processing files, Microsoft Word, latest version, or compatible.
- (d) Amendments to the approved plans shall be submitted to the TOWN for review and approval in the same manner as for the original plans. Approval of amendments shall be in writing.
- (e) The DEVELOPER shall cause to be furnished to the Town Engineer a construction schedule for the proposed public improvements and obtain his written approval for such schedule at least five (5) days prior to the commencement of construction work. The construction schedule shall be updated each month until conditional acceptance of the construction is given. The construction schedule shall be provided to the Town Engineer electronically, in Microsoft Project Manager, or a similar program.

1.7 Incorporation by Reference.

All plans, special provisions, proposals, specifications and contracts for the public improvements furnished and let pursuant to this AGREEMENT shall be and hereby are made a part of this AGREEMENT by reference as fully as if set out herein in full.

1.8 Conditional Acceptance of Constructed Public Improvements.

- (a) No later than fourteen (14) days after public improvements are completed for each phase or for the entirety of the Development, DEVELOPER shall request inspection by the TOWN. If DEVELOPER does not request this inspection within fourteen (14) days of completion of improvements, the TOWN may conduct the inspection without the approval of DEVELOPER.
- (b) If improvements completed by DEVELOPER are in substantial compliance with the approved public improvement plans, the TOWN shall grant “conditional acceptance,” which shall be subject to “final acceptance” as set forth herein. Through its Engineering Department, the TOWN shall issue to the DEVELOPER a letter acknowledging said conditional acceptance.
- (c) If improvements completed by DEVELOPER are not in substantial compliance with the approved public improvement plans, the TOWN shall provide written notice to DEVELOPER of the repairs, replacements, construction or other work required to receive “conditional acceptance.”

DEVELOPER shall complete all needed repairs, replacements, construction or other work within thirty (30) days of said notice, weather permitting. After DEVELOPER completes the repairs, replacements, construction, or other work required, DEVELOPER shall request of the TOWN a reinspection of such work to decide if TOWN can grant "conditional acceptance." The TOWN reserves the right to schedule reinspections, depending upon scope of deficiencies. The TOWN shall provide written notice to DEVELOPER as to whether or not the work is acceptable before the TOWN acts to complete any such work at DEVELOPER's expense as provided in (d) below.

- (d) If DEVELOPER has not completed the improvements on or before the completion dates set forth in "Exhibit B" herein, or if DEVELOPER does not complete the repairs, replacements, construction or other work required within thirty (30) of said notice, the TOWN may exercise its rights to secure performance as provided in Section 14.1 of this AGREEMENT.
- (e) DEVELOPER shall provide a certified statement of construction costs no later than forty-five (45) days after improvements are completed.
- (f) The DEVELOPER shall provide the Town Engineer certified Record Plan Transparencies on Black Image Diazo Reverse Mylars (as-built) plans and other required drawings upon completion of the construction of public improvements, and other documents as required by the TOWN no later than forty-five (45) days after improvements are completed. These documents shall show "as-built" locations and design details of such improvements. In addition, "as-built" plans and other required drawings for public improvements shall be submitted by acceptable electronic transfer, AutoCAD™ drawing files (release 14, or later). Failure to provide the required as-built drawings may result in the suspension of development activities by the TOWN including, but not limited to, the issuance of building permits and certificates of occupancy.
- (g) The TOWN shall issue no building permit for the construction of any structure until all the water lines, fire hydrants, sanitary sewer lines (if required), storm sewer facilities (including storm sewers, catch basins and stormwater detention ponds) and streets (including the curb, gutter and sidewalk, and the street with at least the asphalt base course completed) serving such structure have been completed and granted conditional acceptance.
- (h) The above requirements also apply to sewer and water improvements to be inspected and accepted by the appropriate Special District. The

DEVELOPER shall obtain conditional acceptance of the improvements in writing and provide a copy of the same to the TOWN.

1.9 Maintenance and Warranty of Improvements. For a two (2) year period from the date of conditional acceptance of any improvements related to the Development, DEVELOPER shall warrant said improvements and, at its own expense, take all actions necessary to maintain said improvements and make all needed repairs or replacements that, in the reasonable opinion of the TOWN, shall become necessary. If within thirty (30) days after DEVELOPER's receipt of written notice from the TOWN requesting replacement or repairs to the public improvements, the DEVELOPER has not completed such repairs, the TOWN may exercise its rights to secure performance as provided in Section 14.1 of this AGREEMENT.

1.10 Final Acceptance.

- (a) At least thirty (30) days before two (2) years have elapsed from the issuance of conditional acceptance, or as soon thereafter as weather permits, DEVELOPER shall request a "final acceptance" inspection. The TOWN shall inspect the improvements and shall notify the DEVELOPER in writing of all deficiencies and necessary repairs, if any.
- (b) If there are no deficiencies, and after clear title to on-site and off-site right-of-ways and easements have been transferred to the Town by plat dedication or general or special Warranty Deed, and after all licenses and permits necessary for the development of the SUBDIVISION and obtained by the DEVELOPER have been transferred to the TOWN, the TOWN shall accept streets, right-of-ways and other public ways, easements, open spaces, parks and other lands dedicated on the plat and accept public improvements constructed by the DEVELOPER for ownership and maintenance by the TOWN and through the Engineering Department shall issue to the DEVELOPER a letter acknowledging said final acceptance.
- (c) If there are deficiencies of the public improvements, the TOWN shall provide a written notice identifying the deficiencies and DEVELOPER shall correct all deficiencies at DEVELOPER's expense. Deficiencies of improvements that are considered in the sole opinion of the Town Engineer to be Major Improvements as defined in Section 1.1(c) shall be subjected to an additional two year warranty period and shall not be granted final acceptance following the DEVELOPER's correction of the deficiencies. In the event that the warranty period is extended by an additional two years, the letter of credit or other improvement guarantee provided by the DEVELOPER shall be reevaluated for sufficiency by the

TOWN, and the guarantee must be extended such that it does not expire during any additional warranty period. Corrections to improvements that are not Major Improvements shall be eligible for final acceptance at the end of the initial two-year warranty period and shall not be subject to an additional warranty period.

- (d) If DEVELOPER does not correct all deficiencies and make repairs identified in the “final acceptance” inspection to the TOWN’s satisfaction within thirty (30) days after receipt of said notice, weather permitting, the TOWN may exercise its rights to secure performance as is provided in Section 14.1 of this AGREEMENT.
- (e) If any mechanic’s liens have been filed with respect to the public improvements, the TOWN may retain all or part of the Improvement Guarantee up to the amount of such liens until said liens have been released by the claimant or discharged by judicial action.
- (f) If DEVELOPER fails to submit the improvements for the “final acceptance” inspection and obtain the Town’s acceptance of the public improvements within two (2) years of the date of the issuance of conditional acceptance, or if any improvements are found not to conform to this AGREEMENT or to applicable TOWN standards and specifications, then the warranty period shall extend on a month to month basis and DEVELOPER shall be in default of the AGREEMENT and the TOWN may exercise its rights under Section 14.1 of this AGREEMENT.
- (g) The above requirements shall also apply to the sewer and water improvements to be inspected and accepted by the appropriate Special District. The DEVELOPER shall obtain the final acceptance of the improvements in writing and provide a copy of the same to the TOWN.

1.11 Testing and Inspection.

- (a) DEVELOPER shall employ, at its own expense, a licensed and registered testing company, authorized to do business in the State of Colorado, to do all testing of materials or construction that the TOWN may reasonably require, including but not limited to compaction testing for embankment fills, structural backfills, pipe bedding, trench backfills, subgrade, road base course and asphalt, and concrete strength testing, and shall furnish copies of test results to the TOWN on a timely basis for TOWN review and acceptance before commencement or continuation of construction to which the testing is applicable. DEVELOPER shall repair or remove all materials and work not conforming to such regulations, plans and

specifications and replace the same at DEVELOPER's expense to conform to such regulations, plans and specifications.

- (b) At all times during construction of the public improvements the TOWN and/or representatives of the affected Special Districts shall have access to inspect the materials and workmanship of said construction, determine the progress of the work, and determine compliance of the work with the accepted plans and the TOWN's and Districts' construction regulations. The TOWN Engineer or District's Engineer shall be present to inspect the pressure leakage testing of potable water lines conducted by the DEVELOPER. The Town may collect and deliver a water sample to Weld County Health Department for bacteriological tests of the potable water lines after the DEVELOPER has disinfected said lines according to the TOWN's or District's construction regulations, or the Town may require that the DEVELOPER shall employ, at the DEVELOPER's expense, a testing laboratory acceptable to the TOWN or District to conduct said bacteriological tests.
- (c) All work shown on the accepted public improvement plans shall be subject to inspection by the TOWN Engineer. Inspection by the TOWN Engineer shall not relieve the DEVELOPER from compliance with the accepted plans and specifications or the TOWN's construction regulations. Inspection services requiring the presence of the TOWN Engineer are provided Monday through Friday, except legal holidays, from 9:00 a.m. to 4:00 p.m. During the hours listed above, inspections shall be scheduled a minimum of seventy-two (72) hours in advance with the TOWN Engineer. Requests for inspection services beyond the hours listed above, shall be submitted a minimum of seventy-two (72) hours in advance to the TOWN Engineer for approval. All requests for after-hours inspection services shall be made in writing to the TOWN Engineer. If TOWN approves the request, the DEVELOPER shall reimburse the TOWN for all direct costs of the after-hours inspection services. If TOWN denies the request, the work shall not continue after the time requested until an inspection has been done during the hours listed above. The DEVELOPER shall comply with all notification and inspection requirements of the St. Vrain Sanitation District regarding sanitary sewer improvements.
- (d) The Developer shall pay the Town for all costs incurred by the Town in the performance of the above said services within ten (10) days of the Town submitting an invoice for said services. Failure by the Developer to pay within the specified time shall be cause for the Town to deny future building permits and/or order cessation of all activities on the DEVELOPMENT.

1.12 Financing and Improvement Guarantees.

- (a) Except as otherwise specifically agreed herein, the DEVELOPER agrees to install and pay for all improvements described in “Exhibit B” or otherwise required by this MOAPI as shown on the accepted plat, landscape plans, utility plans, construction drawings, and other accepted documents on file with the TOWN.
- (b) DEVELOPER shall submit to the TOWN an Improvement Guarantee for all public improvements related to the Development. The term of the guarantee shall be for a time sufficient to cover the completion of construction of the public improvements and the warranty period through final acceptance; in no case shall the term of the guarantee be for fewer than two years. The guarantee may be in cash, certified check, or a letter of credit in form and substance as shown on “Exhibit C” attached hereto and incorporated herein by reference. The guarantee shall be subject to approval by the Town Attorney. The guarantee, if a letter of credit, shall not expire during the winter season (November 1- April 30). The Improvement Guarantee shall include, but not be limited to, all water system improvements, sanitary sewer collection lines, sanitary sewer lift stations, storm sewer lines and catch basins, storm drainage swales, storm drainage detention ponds and other improvements, streets, curbs, gutter, sidewalks, landscaping, pedestrian and non-motorized paths and trails, street median, boulevard and subdivision entryway landscaping, street lighting park improvements, irrigation systems, gas services, electric services, telephone services, cable television services and any other improvements constructed in relation to the development of the Lansons Farm Subdivision Amendment aka Indian Peak Medical Center Phase I as described by Exhibit B or by Exhibit F.
- (c) The total amount of the guarantee shall be calculated as one hundred percent (100 %) of the total estimated cost, including labor and materials, of all public improvements to be constructed as described on “Exhibit B,” except those public utilities to be owned by an entity other than the TOWN and for which a separate surety is provided. TOWN shall not release the Improvement Guarantee until the TOWN has granted final acceptance of the improvements. Partial releases of an Improvement Guarantee may be considered when development is phased and a phase has received conditional acceptance. Irrespective of partial releases, at all times during the warranty period on secured improvements, the TOWN shall retain at least ten percent (10%) of the total improvement costs as an

Improvement Guarantee under this section. The costs established in “Exhibit B” shall be reviewed and approved by the Town Engineer; however, partial release of the Improvement Guarantee, as set forth herein, shall not require amendment to the costs set forth in “Exhibit B”.

- (d) If DEVELOPER has not submitted or fails to maintain the Improvement Guarantee, then DEVELOPER is in default of this AGREEMENT and is subject to the provisions of Section 14.1 of this AGREEMENT, and the suspension of development activities by the TOWN including, but not limited to, the issuance of building permits and certificates of occupancy.
- (e) The estimated cost of completion of the public improvements to be constructed as described on “Exhibit B” may increase in the future. Accordingly, the TOWN reserves the right to review and adjust the cost estimates at any time in the future, or to require the DEVELOPER to provide an updated estimate of costs, before or after DEVELOPER provides the Improvement Guarantee. TOWN will make adjusted cost estimates according to changes in the Construction Cost Index as published by the *Engineering News Record*. If the TOWN adjusts cost estimates for the Improvements, the TOWN shall give written notice to the DEVELOPER. The DEVELOPER shall, within thirty days after receipt of said written notice, give the TOWN a new or amended Improvement Guarantee in the amount of the adjusted cost estimates. If the DEVELOPER refuses or fails to so give the TOWN a new or amended Improvement Guarantee, the TOWN may draw on the Improvement Guarantee and either hold such funds as security for performance of this AGREEMENT, or spend such funds to finish improvements or correct deficiencies in the public improvements, or it may withhold building permits and certificates of occupancy within the Development, as the TOWN deems appropriate.
- (f) If an Improvement Guarantee is to expire within thirty (30) calendar days and the DEVELOPER has not yet provided a satisfactory replacement, the TOWN may draw on the Improvement Guarantee and either hold such funds as security for performance of this AGREEMENT, or spend such funds to construct or finish improvements, or correct deficiencies in the public improvements, as the TOWN deems appropriate.
- (g) If the Improvement Guarantee expires or the entity issuing the Improvement Guarantee becomes non-qualifying, then the TOWN shall furnish written notice to the DEVELOPER of the condition, and within thirty (30) days of receipt of such notice the DEVELOPER shall give the TOWN a substituted qualifying Improvement Guarantee, or augment the deficient security as necessary to bring the security into compliance with

the requirements of this section. If the DEVELOPER refuses or fails to give the TOWN a substitute qualifying Improvement Guarantee, or augment the deficient security, the TOWN may draw on the Improvement Guarantee and either hold such funds as security for performance of this AGREEMENT, or spend such funds to construct or finish improvements, or correct deficiencies in the public improvements, and it may withhold building permits and certificates of occupancy within the Development, as the TOWN deems appropriate.

- (h) If the DEVELOPER fails or refuses to construct the improvements listed on "Exhibit B," or fails or refuses to finish the construction of the improvements listed on "Exhibit B," the TOWN may draw on the Improvement Guarantee and either hold such funds as security for performance of this AGREEMENT, or spend such funds to construct or finish the improvements, or correct deficiencies in the public improvements, as the TOWN deems appropriate

1.13 Insurance. DEVELOPER shall guarantee, and upon written request by the TOWN, furnish proof to the TOWN that all employees and contractors engaged in the construction of improvements are covered by adequate Workers' Compensation Insurance and Public Liability Insurance through contract requirements and other normal means.

1.14 OSHA Compliance. DEVELOPER shall require, and upon written request by the TOWN furnish proof to the TOWN, all contractors engaged in the construction of PUBLIC IMPROVEMENTS to faithfully comply with all provisions of the Federal Occupational Safety and Health Act (OSHA).

1.15 Development Impact Fees. The TOWN has established certain uniform development impact fees that directly address the effect of development intended to occur within the PROPERTY upon the TOWN' infrastructure, administration and delivery of governmental services. The DEVELOPER agrees to the payment of these uniform development impact fees as established by the TOWN. The TOWN and the DEVELOPER further agree that the TOWN may amend the development impact fees from time to time as needed to address changing affects upon the TOWN's infrastructure, administration and deliver of governmental services as a result of development occurring within the TOWN. The development impact fees are to be paid at the then current rate upon subdivision of the property and/or the issuance of building permits whichever is applicable for that particular development impact fee.

2. CONSTRUCTION OF IMPROVEMENTS.

2.1 Improvements to be Constructed. In accordance with the policies and ordinances of the TOWN, the DEVELOPER shall construct all improvements specified in Exhibit B” and will comply with all additional provisions specified in Exhibit F. If there is a discrepancy between the improvements shown on any approved plans or drawings and as listed in Exhibit B, then the larger quantity or more expensive improvement shall be required.

2.2 On-site and Off-site Rights-of-way, Easements, Licenses and Permits. For full development of the PROPERTY to occur, the DEVELOPER may need to acquire certain off-site and on-site rights-of-way, easements, licenses and permits for the construction of off-site and on-site improvements, as identified in “Exhibit B” and the approved development plans and convey the same to the TOWN. All acquisition costs of off-site and on-site rights-of-way, easements, licenses and permits necessary to serve the PROPERTY shall be the DEVELOPER’s sole responsibility, subject to reimbursement as detailed in this MOAPI.

- (a) All such conveyances shall be free and clear of liens, taxes and encumbrances and shall be by plat dedication or by general or special Warranty Deed in form and substance acceptable to the TOWN Attorney. The TOWN at the DEVELOPER’s expense shall record all title documents. The DEVELOPER shall also furnish, at its own expense, an ALTA title policy for all interest(s) so conveyed, subject to approval by the TOWN Attorney.
- (b) If the DEVELOPER cannot acquire an off-site or on-site easement or rights-of-way necessary to develop the PROPERTY, the DEVELOPER may request the TOWN’s assistance in getting the easements or rights-of-way. Such assistance by the TOWN shall be in compliance with Colorado law authorizing the TOWN’s use of eminent domain. The DEVELOPER shall advance to the TOWN all acquisition costs, including any court costs and attorneys’ fees, the TOWN may incur in providing assistance.
- (c) The TOWN and the DEVELOPER agree that the acquisition of off-site and on-site rights-of-way, easements, licenses and permit necessary to serve the transportation needs of the PROPERTY are directly related to and generated by development intended to occur within the PROPERTY and that no taking thereby will occur requiring any compensation.

2.3 Construction.

- (a) DEVELOPER shall furnish and install, at its own expense, the improvements listed on “Exhibit B,” in conformance with the subdivision plat and final development plan, and with the construction plans, specifications and drawings approved by the TOWN. The Developer will

cause his contractors to furnish the Town Engineer with a project schedule of proposed operations at least five (5) days prior to their commencement of construction work. Construction of public improvements shall be completed within a reasonable time, not to exceed two calendar years from the date of commencement.

- (b) If DEVELOPER does not meet the above obligations, then DEVELOPER shall be in default of the AGREEMENT, and the TOWN may exercise its rights under Section 14.1 of this AGREEMENT including the suspension of development activities by the TOWN including, but not limited to, withholding the issuance of building permits and certificates of occupancy.

2.4 Utility Coordination and Installation. In addition to the improvements described on “Exhibit B,” that are the DEVELOPER’s responsibility to construct, install and develop, DEVELOPER shall also be responsible for coordination of and payment for installation of on-site and off-site electric, street lights, natural gas, telephone, cable television and other utilities required to serve the Development. All utilities within the Development shall be placed underground to the extent required by the *Frederick Municipal Code*.

2.5 Utility Relocation. DEVELOPER shall pay the full cost of relocating existing utilities that the development of the SUBDIVISION may require. DEVELOPER shall relocate all existing overhead utilities within the SUBDIVISION or in road right-of-ways adjacent to the SUBDIVISION, including but not limited to electric or telecommunications lines and cables, underground. Facilities designed for the transmission or distribution of electric energy at voltages greater than 15,000 volts shall be exempt from this requirement.

2.6 Trash, Debris, Mud, Wind and Water Erosion.

- (a) **Erosion and Sediment Control Plan.** DEVELOPER shall provide a wind and stormwater erosion and sediment control plan for review and acceptance by the TOWN. The plan shall address the existing and potential erosion and sediment problems to be created by the proposed development. Conservation measures used to mitigate these concerns shall be in accordance with standards and specifications in effect at the time of construction and may include by way of illustration, restrictions on the acreage of land stripped of vegetation, temporary seeding with grass cover, the use of geo-textile and erosion control mats, sprinkling of exposed ground, berms and sedimentation fences, chiseling exposed ground, etc. If applicable, DEVELOPER shall consult the Soil Conservation District regarding erosion and sediment control.

- (b) DEVELOPER agrees that during construction of the development and improvements described herein, DEVELOPER shall take any and all steps necessary to control trash, debris and wind or water erosion in the development. If the TOWN determines that said trash, debris or wind or water erosion causes damage or injury or creates a nuisance, DEVELOPER agrees to abate said nuisance and/or to correct any damage or injury within five (5) working days after notification by TOWN. If DEVELOPER does not abate said nuisance or if an emergency exists, to be determined by the TOWN in its sole discretion, the TOWN may abate the nuisance and/or correct any damage or injury without notice to DEVELOPER, at DEVELOPER's expense.
- (c) DEVELOPER agrees to take any and all steps necessary to prevent the transfer of mud or debris from the construction site onto public rights-of-way and to immediately remove such mud and debris from public rights-of-way after notification by the TOWN. If DEVELOPER does not abate such mud or debris, or if an emergency exists, TOWN may abate the same at DEVELOPER's expense.

2.7 State Stormwater Discharge Permit Required. DEVELOPER shall obtain, if required by state or local statutes or policies, a CDPS "General Permit for Stormwater Discharges Associated with Construction Activity" required during construction.

2.8 Operation of Construction Equipment.

- (a) DEVELOPER shall prohibit the operation of construction equipment outside an enclosed structure between the hours of 8:00 p.m. and the hour of 7:00 a.m. on weekdays, or the hour of 8:00 a.m. on legal holidays and weekends. The Town Engineer may, upon written application, alter the hours of operation for good cause.
- (b) The operation of construction equipment for grading or constructing either surface improvements or underground utilities, either public or private, shall be prohibited between the hours of 8:00 p.m. and 7:00 a.m. on weekdays and 4:00 p.m. and 8:00 a.m. on legal holidays and weekends. Upon written request, the Town Engineer may alter the hours of operations.

3. **PUBLIC USE LAND DEDICATION.** Before the issuance of any building permits, DEVELOPER shall convey to the TOWN those certain lands as described or depicted on the subdivision plat as dedicated to public uses. Said conveyance shall be by General or Special Warranty Deed in form and substance satisfactory to the Town Attorney. The DEVELOPER shall, at DEVELOPER's expense, furnish a commitment for title

insurance on the property at the time of conveyance. The property shall be free and clear of liens, taxes and encumbrances, except for ad valorem real property taxes for the calendar year of conveyance and thereafter, but subject to all easements, right-of-way, reservations, restrictions, or other title burdens of record, or those easements and right-of-ways that would be readily apparent from a physical inspection. The TOWN shall record all title documents at the DEVELOPER's expense.

4. **WATER RIGHTS.**

4.1 Water Rights.

- (a) If not transferred to the TOWN at the time of annexation, the DEVELOPER will transfer to the TOWN 1.2 units of Colorado Big Thompson water for each residential lot, or for each Single Family Equivalency (SFE) to be constructed within the subdivision before the TOWN records the final Subdivision Plat.
- (b) The TOWN may require the dedication of irrigation water rights that are to be used in the irrigation of park and open space. The DEVELOPER shall by Special Warranty Deed acceptable to the TOWN convey to the TOWN all non-tributary and not non-tributary groundwater as defined by C.R.S. § 37-90-103, whether adjudicated, unadjudicated, permitted or unpermitted, underlying the property.
- (c) The TOWN and the DEVELOPER agree that the water rights dedications are directly related to and generated by development intended to occur within the SUBDIVISION and that no taking thereby will occur requiring any compensation.

5. **WATER IMPROVEMENTS.**

5.1 Water Service Availability. TOWN provides water service by an intergovernmental agreement with the Central Weld County Water District. TOWN does not guarantee the availability of water service to the DEVELOPER for any phase of the development from the CWCWD system. A determination of water service availability by TOWN shall be made by a water system analysis at the time the DEVELOPER requests water taps.

5.2 Extension of Water Services.

- (a) DEVELOPER shall install at his sole cost and expense, all the water mains, trunk lines, pumping and storage facilities and appurtenances necessary to provide service from the TOWN 's system to the SUBDIVISION pursuant to the TOWN accepted plans, specifications,

and as described in “Exhibit B.” These extensions may include the oversizing of lines and pumping and storage facilities for future development of adjacent property.

- (b) DEVELOPER shall install at his sole cost and expense, all the water lines, fire hydrants and appurtenances within the SUBDIVISION. Water lines lying within the dedicated right-of-way and utility easements shall be dedicated to the TOWN after construction.
- (c) Any reimbursements to the DEVELOPER for oversizing of water lines and other water facilities will be as specified by the TOWN.

5.3 Water Connection and Plant Investment Fees.

- (a) Water connection and plant investment fees shall be the existing TOWN water connection and plant investment fees at the time that the DEVELOPER requests water service. Water connection and plant investment fees shall be paid when a building permit for a structure is requested from the TOWN. CBT water shares are acceptable in lieu of cash payment for the CBT water share portion of the water tap fee for each water tap.
- (b) If the SUBDIVISION is not already in the Northern Colorado Water Conservancy District, the DEVELOPER agrees to petition for inclusion in said District and to the payment of any fees and taxes levied by the District as a condition of said inclusion.

6. SANITARY SEWER SERVICES

6.1 Provision of Sanitary Sewer Service.

- (a) TOWN provides sewer service by an intergovernmental agreement with the St. Vrain Sanitation District. The DEVELOPER shall comply at the time of development with the District’s requirements.
- (b) If the SUBDIVISION is not already in the St. Vrain Sanitation District the DEVELOPER agrees to petition for inclusion in said District and to the payment of any fees and taxes levied by the District as a condition of said inclusion.
- (c) The TOWN shall require proof of purchase of a sewer tap for a building site before the TOWN will issue a building permit for the site.

6.2 Extension of Sanitary Sewer Services.

- (a) DEVELOPER shall install at his sole cost and expense, all the sewer mains, trunk lines, pumping facilities and appurtenances necessary to provide service from the District's system to the SUBDIVISION pursuant to District accepted plans, specifications, and as described in "Exhibit B." These extensions may include the oversizing of lines and pumping facilities for future development of adjacent property.
- (b) DEVELOPER shall install at his sole cost and expense, all the sewer lines and appurtenances within the SUBDIVISION. Sewer lines lying within the dedicated right-of-way and non-exclusive utility easements shall be dedicated to District after construction.
- (c) Any reimbursements to the DEVELOPER for oversizing of sewer lines and other sewer facilities will be as specified by the District.

6.3 Sanitary Sewer Service Availability. TOWN does not warrant the availability of sanitary sewer service to the DEVELOPER for any phase of development. A determination of sanitary sewer service availability by the District shall be made by a system analysis at the time the DEVELOPER requests sanitary sewer taps.

6.4 Sanitary Sewer Tap and Plant Investment Fees.

- (a) Sanitary sewer tap and plant investment fees shall be the existing District sanitary sewer tap and plant investment fees at the time that the DEVELOPER requests sewer taps.
- (b) The TOWN shall require proof of payment of the sewer tap and plant investment fees for a building site before the TOWN will issue a building permit for the site.

7. ELECTRIC SERVICES.

7.1 Provision of Electric Service. The parties agree that the SUBDIVISION will receive electric service from the TOWN. The DEVELOPER shall comply at the time of development with the TOWN's requirements for the extension of main feeder lines, internal subdivision distribution systems, service connections and the payment of any system capital investment fees required by the TOWN to the TOWN at the time that the DEVELOPER requests electric service. All electric facilities serving the SUBDIVISION and constructed by the DEVELOPER shall be dedicated to the TOWN prior to final acceptance.

7.2 Electric Service Availability. TOWN does not warrant the availability of electric service to the DEVELOPER for any phase of development. A

determination of electric service availability by TOWN shall be made by an electric system analysis at the time the DEVELOPER requests electric service. In the event that the TOWN or United Power determines that it has insufficient electric service capacity, TOWN shall issue no electric service connections until there is electric service capacity available.

7.3 Extension of Electric Services.

- (a) United Power shall install at the DEVELOPER's sole cost and expense, all the electric main feeder lines and appurtenances necessary to provide service from the TOWN or United Power's system to the SUBDIVISION. Extensions may include the oversizing of main feeder lines for future development of adjacent property.
- (b) United Power shall install at the DEVELOPER's sole cost and expense, all the electric distribution system and appurtenances within the SUBDIVISION.
- (c) The DEVELOPER shall advance a refundable construction deposit to the TOWN equal to the estimated total cost of the line extension and subdivision distribution system construction. Upon completion of the construction of the line extension and distribution system, the construction deposit shall be compared to the actual cost of said construction. If the actual cost of said construction is less than the construction deposit originally estimated, the TOWN shall thereupon refund the difference to the DEVELOPER. If the actual cost of said construction is greater than the construction deposit originally estimated, the DEVELOPER shall reimburse the TOWN the difference.
- (d) Any reimbursements to the DEVELOPER for oversizing of main feeder lines and other electric facilities will be as specified in this MOAPI.

7.4 Electric Service Connection, Electric Capital Improvement and Main Feeder Capital Investment Fees. Electric service connection, electric capital improvement and main feeder capital investment fees shall be the existing TOWN electric service connection, electric capital improvement and main feeder capital investment fees at the time that the DEVELOPER requests electric service. Electric service connection and electric capital improvement fees shall be paid to the TOWN when a building permit for a structure is requested from the TOWN. Main feeder capital investment fees shall be paid as part of the construction deposit required for line extension, subdivision distribution and service connection construction by the TOWN.

8. DRAINAGE IMPROVEMENTS

8.1 Provision of Storm Water Drainage. It is agreed by the parties that the SUBDIVISION will participate in the storm water drainage system provided by the TOWN. The DEVELOPER shall comply at the time of development with the Town's requirements.

- (a) DEVELOPER shall construct drainage improvements for the development in accordance with the master drainage plan PROPERTY prepared by the DEVELOPER and reviewed and accepted by the TOWN and the responsible drainage district, if any. These improvements may consist of on-site and off-site improvements, including but not limited to, storm water lines, drainage swales, pumping, storage facilities and storm water treatment facilities. The improvements may include the oversizing of facilities to accommodate future development of adjacent property or to accommodate pass-through of historical flows from adjacent property.
- (b) DEVELOPER shall install at his sole cost and expense, all the storm water lines, drainage swales, pumping, detention and storm water treatment facilities within the SUBDIVISION. DEVELOPER shall install at his sole cost and expense, such sedimentation and erosion control measures as are required. DEVELOPER shall install at his sole cost and expense, such groundwater and foundation drainage system as may be required for development of the SUBDIVISION.
- (c) Any reimbursements to the DEVELOPER for oversizing of storm sewer lines and other storm water facilities, or the construction of off-site facilities will be as specified in this MOAPI.

8.2 Master Drainage Plan.

- (a) The DEVELOPER, at his sole expense shall prepare a master drainage plan for the SUBDIVISION. The master drainage plan shall show the location and extent of all drainage system improvements, including but not limited to collection, detention and treatment facilities for on-site storm water and the pass-through of off-site historical storm water flows based on the 100 year storm flows. If the master drainage plan results in changes to drainage affecting other property or facility owners, the TOWN may require the DEVELOPER to obtain written consent from each property or facility owner for the changes before the TOWN will accept the plan.
- (b) Storm water discharges and runoff shall be designed to discharge into TOWN accepted drainage ways and facilities, and shall, to the maximum extent possible, avoid conveying storm water discharges in irrigation ditches. In the event that storm water discharges into an irrigation ditch,

the DEVELOPER shall by separate agreement obtain the written consent of the owner(s) of the irrigation facility to accept said storm water. A copy of the agreement shall be provided to the TOWN before the TOWN will accept the master drainage plan.

- (c) The master drainage plan shall define the DEVELOPER's responsibility for on-site surface drainage improvements. The master drainage plan shall include construction of facilities to convey, collect and detain storm water and to remove pollutants from it.
- (d) The master drainage plan shall define the DEVELOPER's responsibility for groundwater and foundation drainage improvements, if any. Groundwater and foundation drainage improvements shall not discharge into public storm water facilities or improvements without prior written acceptance by the TOWN. DEVELOPER shall be responsible for obtaining all state and federal permits that may be required for the discharge of this groundwater to the state waters. The DEVELOPER shall be responsible for ongoing maintenance of all improvements necessary to transport groundwater to a natural drainageway or storm sewer system approved by the TOWN.
- (e) The master drainage plan shall define the DEVELOPER's responsibility for off-site improvements including the oversizing of facilities.
- (f) The TOWN may require the DEVELOPER to update the master drainage plan for the SUBDIVISION for the review of each final plat of a phased project to determine the design, timing, and responsibility for the improvements.

8.3 Drainage Improvement Construction.

- (a) DEVELOPER shall construct drainage improvements for the PROPERTY in accordance with the Town's Master Drainage Plan and plans and construction specifications accepted by the TOWN and as described in "Exhibit B."
- (b) The DEVELOPER shall so design and construct all storm drainage facilities as to control all stormwater runoff greater than that historically generated from the SUBDIVISION. The DEVELOPER shall not alter historic flows in a way that would adversely affect upstream or downstream properties.
- (c) The DEVELOPER shall construct all improvements in an appropriate sequence to meet the demands that development of the SUBDIVISION

generates. The DEVELOPER shall meet all TOWN standards and specifications in effect at the time of construction.

- 8.4 Overlot Grading of the SUBDIVISION.** DEVELOPER shall initiate no overlot grading until the TOWN issues written acceptance of utility plans. The DEVELOPER shall provide temporary erosion control during overlot grading until the drainage improvements are completed.
- 8.5 Drainage Improvement Completion Before Issuance of Building Permits.** Drainage improvements shall be completed and granted conditional acceptance by the TOWN before the issuance of building permits. Completion of the improvements shall include the certification by a licensed professional engineer that DEVELOPER has constructed the drainage facilities that serve the development in conformity with the plans reviewed by the TOWN. Any deviation from the accepted plans shall be the responsibility of the DEVELOPER to correct. Said certification shall be submitted to the TOWN at least two (2) weeks before the date of issuance for any subsequent building permit.
- 8.6 Modification of Accepted Drainage Improvements.** Drainage improvements for each lot shall be constructed by the DEVELOPER in accordance with plans Approved by the TOWN. Said plans shall conform to the TOWN's then existing regulations. DEVELOPER shall furnish copies of accepted plans to subsequent purchasers of lots and record a disclosure with all lots sold that it shall be the responsibility of the fee title holder to maintain the stormwater drainage improvements as constructed. Any changes from the Approved plans with respect to grade elevation, storm drainage facility design, or landscaping that will change, modify, impede or otherwise block the flow of stormwater on or across any private property, that occur as a result of the construction of houses and/or other development of lots, whether by the DEVELOPER or other parties, shall require the acceptance of the TOWN. The TOWN may withhold the issuance of building permits and certificates of occupancy until the TOWN has reviewed and determined that such changes are acceptable for the safe and efficient delivery of storm drainage water.
- 8.7 Storm Water Capital Expansion Fees.** The DEVELOPER shall pay any storm water capital expansion fees to the TOWN.
- 8.8 Areas of Special Flood Hazard.** Construction within a FEMA designated "area of special flood hazard" is prohibited except as may be allowed in accordance with Article 8 of the Frederick Land Use Code. If any portion of the SUBDIVISION lies within an area of special flood hazard, including unmapped areas of special flood hazard, as defined by the Federal Emergency Management Agency (FEMA), the DEVELOPER is responsible for all the necessary design and the submittal of an application to FEMA for proposed changes to the

designation to enable development of the SUBDIVISION within said areas. The TOWN must review and accept any submittal to FEMA before it is submitted to FEMA. FEMA shall approve any change in the area of special flood hazard designation before they will permit the DEVELOPER to undertake development activities within the area affected by the proposed change.

9. TRANSPORTATION FACILITIES

9.1 Traffic Impact Study. The DEVELOPER shall provide the TOWN a traffic impact study prepared by a transportation professional with adequate experience in transportation engineering and planning, in accordance with the criteria specified by the TOWN at the time of submittal of a final plat, unless the TOWN waives the requirement. The traffic impact study shall give special consideration to the use of traffic calming techniques and alternative modes of transportation in the design of the transportation facilities.

9.2 Off-site and On-site Rights-of-way, Easements, Licenses and Permits.

- (a) For full development of the SUBDIVISION to occur, the DEVELOPER may need to acquire certain off-site and on-site rights-of-way, easements, licenses and permits for the construction of off-site and on-site improvements, as identified in the accepted traffic study or future updates to the study. All acquisition costs of off-site and on-site rights-of-way, easements, licenses and permits necessary to serve the SUBDIVISION shall be the DEVELOPER's sole responsibility, subject to reimbursement as detailed in this MOAPI.
- (b) If the DEVELOPER cannot acquire an off-site or on-site easement or rights-of-way necessary to develop the SUBDIVISION, the DEVELOPER may request the TOWN's assistance in getting the easements or rights-of-way. Such assistance by the TOWN shall be in compliance with Colorado law authorizing the TOWN's use of eminent domain. The DEVELOPER shall advance to the TOWN all acquisition costs, including any court costs and attorneys' fees, the TOWN may incur in providing assistance.

9.3 On-site and Off-site Transportation Improvements. For full development of the SUBDIVISION to occur, certain on-site and off-site transportation improvements, as identified in the accepted traffic study, may be necessary. The DEVELOPER shall construct the improvements in a sequence acceptable to the TOWN to meet the demands that development of each phase of the SUBDIVISION will generate. The DEVELOPER shall follow all applicable provisions and standards of the Frederick Municipal Code. The DEVELOPER agrees to construct or contribute to the construction of all on-site and off-site

transportation improvements to accommodate transportation needs that each phase of the SUBDIVISION development will generate.

- 9.4 On-site and Off-site Arterial Street Improvements and Arterial Intersection Improvements.** The DEVELOPER's construction of on-site and off-site arterial street improvements and arterial intersection improvements in excess of the cost of a collector street and collector street intersection, excluding on-site rights-of-way and site specific improvements, will be subject to reimbursement by the TOWN or adjacent benefitted property as specified in this MOAPI.
- 9.5 On-site Transportation Improvements.** The DEVELOPER is solely responsible for construction of all transportation improvements to accommodate development of the SUBDIVISION that do not directly benefit other properties. The TOWN will not provide for reimbursement to the DEVELOPER for these expenses.
- 9.6 Street Improvements.** For the purposes of this AGREEMENT, "street improvements" shall be defined to include, but not limited to, all improvements within the right-of-way such as bridges, sub-base preparation, road base, asphalt, concrete, seal coat, curb and gutter, medians, entryways, traffic calming features, underground utilities, sidewalks, bicycle and pedestrian paths, traffic signs, street lighting, street name signs, landscaping, irrigation systems and drainage improvements. Street improvements other than curbs, gutters, sidewalks and signs, shall not be installed until all utility lines to be placed within the right-of-way have been completely installed, including individual lot service lines leading in from the main to the property line. All street improvements shall be constructed and installed pursuant to TOWN accepted plans, specifications, and as detailed in "Exhibit B."
- 9.7 Street Signs, Traffic Signs and Striping.** TOWN will install, at DEVELOPER's expense, striping, street name signs, stop signs, speed limit signs and other regulatory signs on all internal streets and on those off-site streets as determined appropriate by the TOWN. TOWN shall install signs and striping in accordance with the Model Traffic Code, as from time to time amended, and other applicable legal requirements.
- 9.8 Street Lights.** The TOWN shall install at the DEVELOPER's sole costs and expense all required street lighting and underground electrical supply.
- 9.9 School Bus Shelters.** DEVELOPER will install at his sole cost and expense appropriately designed pedestrian shelters at school bus stops within the development. The location of the shelters shall be decided in cooperation with the School District. School bus shelters shall be owned and maintained by the Homeowners Association.

9.10 Mail Boxes. The DEVELOPER shall coordinate with the U.S. Postal Service and bear the cost of installing cluster mailboxes for the subdivision.

10. PARKS AND OPENSOURCE

10.1 Park and Open Space Improvements.

- (a) **Park Master Plan.** Park and open space improvements for the development shall be designed by a professional park planner employed by the DEVELOPER, or by the TOWN at the DEVELOPER's sole cost, and constructed in accordance with the resulting master plan accepted by the TOWN (and the Carbon Valley Recreation District, if the park and/or open space is to be dedicated to the District) and as detailed in "Exhibit B." These improvements may include but not be limited to, the development of passive use open spaces and active use parks and open space and playgrounds.
- (b) DEVELOPER shall construct, develop and install at his sole cost and expense, all landscaping, irrigation systems, ballfields, courts, skate parks, playgrounds, picnic shelters, restrooms, nature observation stations, trails and walkways within the SUBDIVISION in accordance with the master park plan.
- (c) Any reimbursements to the DEVELOPER for the construction of facilities to be shared by other developments will be as specified in this MOAPI.

11. FIRE PROTECTION FACILITIES. The DEVELOPER shall be solely responsible for installing all fire hydrants and other fire protection facilities in the SUBDIVISION and on its perimeter as may be required by the Frederick-Firestone Fire Protection District.

12. LANDSCAPING.

12.1 Public and Private Landscape Improvements.

- (a) **Public Landscaping Improvements.** DEVELOPER shall employ a qualified landscape planner or architect to design landscape improvements for public lands and rights-of-way within the development. DEVELOPER shall construct landscape improvements as required in the landscape and irrigation plans reviewed and accepted by the TOWN and as detailed in "Exhibit B."
- (b) **Private Landscaping Improvements.** For private landscape improvements, excluding single family detached residential lots,

DEVELOPER shall furnish a final landscape plan to the TOWN for review and acceptance before installation of landscape improvements.

13. **DEVELOPMENT REQUIREMENTS AND EXACTIONS NOT A TAKINGS.**

The TOWN and the DEVELOPER agreed that in all instances the requirements and exactions contained in this agreement are directly related to and generated by the development intended to occur within the SUBDIVISION and that no takings thereby will occur requiring any compensation.

14. **MISCELLANEOUS TERMS**

14.1 Breach of AGREEMENT, Default. In the event that the DEVELOPER should fail to timely comply with any of the terms, conditions, covenants and undertakings of this AGREEMENT, the TOWN in its sole discretion may declare the DEVELOPER in default and after giving thirty (30) days written notice may call the security provided in Section 1.12 and exercise all other remedies available to the TOWN. The TOWN may withhold any additional building permits, certificates of occupancy, or provision of new utilities, fixtures or services until the completion of the improvements. Any cost incurred by the TOWN including, but not limited to, administrative costs and reasonable attorneys' fees, in pursuit of any remedies due to the breach by the DEVELOPER shall be paid by the DEVELOPER. The TOWN may deduct these costs from the Improvement Guarantee. Failure to timely complete construction of improvements that is solely due to inclement weather, acts of God, material shortages, labor strikes, and other matters not within the DEVELOPER'S control shall not be considered a breach of the AGREEMENT.

14.2 Reimbursement to TOWN. The TOWN may complete construction, repairs, replacements, or other work for DEVELOPER pursuant to Sections 1.8, 1.9, 1.10, or 14.1 of this AGREEMENT with funds other than the Improvement Guarantee, in which event DEVELOPER shall reimburse the TOWN within thirty (30) days after receipt of written demand and supporting documentation from the TOWN. If DEVELOPER fails to so reimburse TOWN, then DEVELOPER shall be in default of the AGREEMENT and the TOWN may exercise its rights under Section 14.1 of this AGREEMENT.

14.3 Access to Public Street Required for Building Permit. TOWN shall issue no building permits for any structure located more than five hundred feet from a single point of access.

14.4 Indemnification and Release of Liability.

- (a) **General Liability.** DEVELOPER agrees to indemnify and hold harmless the TOWN, its officers, employees, agents, and servants, and to pay any judgments rendered against said persons because of any suit, action, or claim caused by, arising from, or due to acts or omissions by the DEVELOPER, its officers, employees, agents, consultants, contractors, and subcontractors, and to pay to the TOWN and said persons their reasonable expenses, including, but not limited to, reasonable attorneys' fees and reasonable expert witness fees, incurred in defending any such suit, action or claim; provided, however, that DEVELOPER's obligation herein shall not apply to the extent said suit, action or claim results from any acts or omissions of officers, employees, agents or servants of the TOWN or conformance with requirements imposed by the TOWN. Said obligation of DEVELOPER shall be limited to suits, actions or claims based upon conduct before "final acceptance" by the TOWN of the construction work. DEVELOPER acknowledges that the TOWN's review and approval of plans for development of the property is done in furtherance of the general public's health, safety and welfare and that no immunity is waived and that no specific relationship with, or duty of care to, the DEVELOPER or third party is assumed by such review or approval.
- (b) **Drainage Liability.** The DEVELOPER shall indemnify and hold harmless the TOWN for any liability the latter may have or account of any change in the nature, direction, quantity, or quality of historical drainage flow resulting from the development of this PROPERTY or from the construction of streets or storm sewers therein. In addition, the DEVELOPER promises to reimburse the TOWN for any costs including, but not limited to, reasonable attorneys' fees, which the TOWN incurs in acquiring or condemning any rights-of-way or easements that the DEVELOPER requires the TOWN to acquire or condemn, or which the TOWN is held to have acquired or condemned for drainage, because of the development of this PROPERTY.

14.5 Governmental Immunities Act. The TOWN is relying on, and does not waive or intend to waive by any provision of this AGREEMENT, the monetary limitations or any rights, immunities and protection provided by the Colorado Governmental Immunities Act (C.R.S. 24-10-101 et seq.) as from time to time amended, or otherwise available to the TOWN, its officers, agents, employees, attorneys, engineers, planners, indemnifiers and insurers.

14.6 Recording of AGREEMENT. This AGREEMENT shall be recorded with the Weld County Clerk and Recorder and shall be a covenant running with the land herein described in order to put prospective purchasers or other interested parties

on notice as to the terms and provisions hereof. The DEVELOPER shall include on the final plat a “plat note” noting the existence of the AGREEMENT and its attached Exhibits by reference to its reception number as recorded by the Weld County Clerk and Recorder. All recording fees shall be paid by the DEVELOPER. The TOWN shall retain the recorded AGREEMENT.

14.7 Binding Effect of AGREEMENT. This AGREEMENT shall run with the land included within the SUBDIVISION and shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

14.8 Assignment, Delegation and Notice. DEVELOPER shall provide to the TOWN for approval, written notice of any proposed transfer of title to any portion of the Development and of the AGREEMENT obligations to any successor, as well as arrangements, if any, for delegation of the improvement obligations hereunder. DEVELOPER and successor shall, until written TOWN approval of the proposed transfer of title and delegation of obligations, be jointly and severally liable for the obligations of DEVELOPER under this AGREEMENT.

EXCEPTION: The DEVELOPER may sell individual developed lots, commercial lots or single units in a multi-family development without the TOWN’s approval.

14.9 Modification and Waiver. No modification of the terms of this AGREEMENT shall be valid unless in writing and executed with the same formality as this AGREEMENT, and no waiver of the breach of the provisions of any section of this AGREEMENT shall be construed as a waiver of any subsequent breach of the same section or any other sections that are contained herein.

14.10 Addresses for Notice. Any notice or communication required or permitted hereunder shall be given in writing and shall be personally delivered, or sent by United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed as follows:

TOWN:

Town of Frederick
c/o Town Manager
P.O. Box 435
Frederick, Colorado 80530

DEVELOPER:

Carbon Valley Health Care Holdings
Corporation
c/o Neil Bertrand, CFO
1950 Mountain View Avenue
Longmont, Colorado 80501

With copy to:

Samson & Vidergar, LLC
255 Weaver Park Road, Suite 200
P.O. Box 1079
Longmont, CO 80502

Or to such other address or the attention of such other person(s) as hereafter designated in writing by the applicable parties in conformity with this procedure. Notices shall be effective upon mailing or personal delivery in compliance with this paragraph.

- 14.11. **Force Majeure.** Whenever an agreed upon deadline requires DEVELOPER to complete construction, maintenance, repair, or replacement of improvements, said deadline shall be extended for a reasonable time if the performance cannot be completed in a timely manner due to Acts of God, or other circumstances constituting force majeure, or circumstances beyond the reasonable control of DEVELOPER.
- 14.12. **Approvals or Acceptance.** Whenever approval or acceptance of a matter is required or requested of the TOWN pursuant to any provisions of this AGREEMENT, the TOWN shall act reasonably in responding to such matter.
- 14.13. **Previous Agreements.** All previous written and recorded agreements between the parties, their successors, and assigns, including, but not limited to, any Annexation Agreement, shall remain in full force and effect and shall control this Development. If any prior agreements conflict with this AGREEMENT, then this AGREEMENT controls.
- 14.14. **Title and Authority.** DEVELOPER warrants to the TOWN that it is the record owner for the property within the Development or is acting in accordance with the currently valid and unrevoked power of attorney of the record owner hereto attached. The undersigned further warrant to have full power and authority to enter this AGREEMENT.
- 14.15. **Severability.** This AGREEMENT is to be governed and construed according to the laws of the State of Colorado. In the event that upon request of DEVELOPER or any agent thereof, any provision of the AGREEMENT is held to violate municipal, state, or federal laws and thereby rendered unenforceable, the TOWN, in its sole discretion, may determine whether the remaining provisions will or will not remain in force.
- 14.16. **Original Counterparts.** This Agreement may be executed in counterparts, each of which will be an original, but all of which together shall constitute one and the same instrument.

14.17. **Choice of Law and Venue.** This AGREEMENT is to be governed and construed according to the laws of the State of Colorado. The parties hereto agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the State courts located in the County of Weld, State of Colorado. The aforementioned choice of venue is intended by the parties to be mandatory and not permissive in nature, thereby precluding the possibility of litigation between the parties with respect to or arising out of this Agreement in any jurisdiction other than that specified in this paragraph. Each party hereby waives any right it may have to assert the doctrine of forum non conveniens or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this paragraph, and stipulates that the State courts located in the County of Weld, State of Colorado shall have in personam jurisdiction and venue over each of them for the purpose of litigating any dispute, controversy, or proceeding arising out of or related to this

(THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the parties have executed this agreement as of the date first set forth above.

TOWN OF FREDERICK

**CARBON VALLEY HEALTH CARE
HOLDINGS CORPORATION**

By _____
Tony Carey, Mayor

By _____
Neil Bertrand, CFO

ATTEST:

By _____
Meghan C. Martinez, Town Clerk

STATE OF COLORADO)

) **SS:**

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__ by
as Mayor and _____ as Town Clerk of the Town of Frederick.

My commission expires:

Witness my hand and official seal.

Notary Public

STATE OF COLORADO)

) **SS:**

COUNTY OF _____)

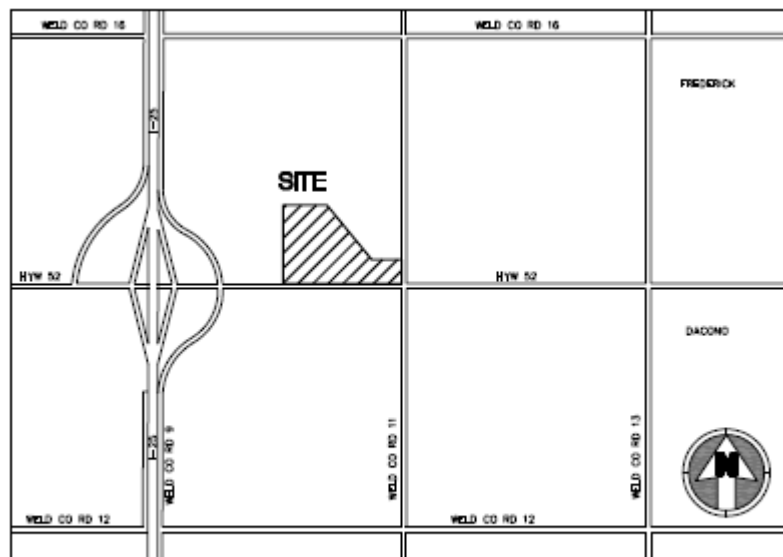
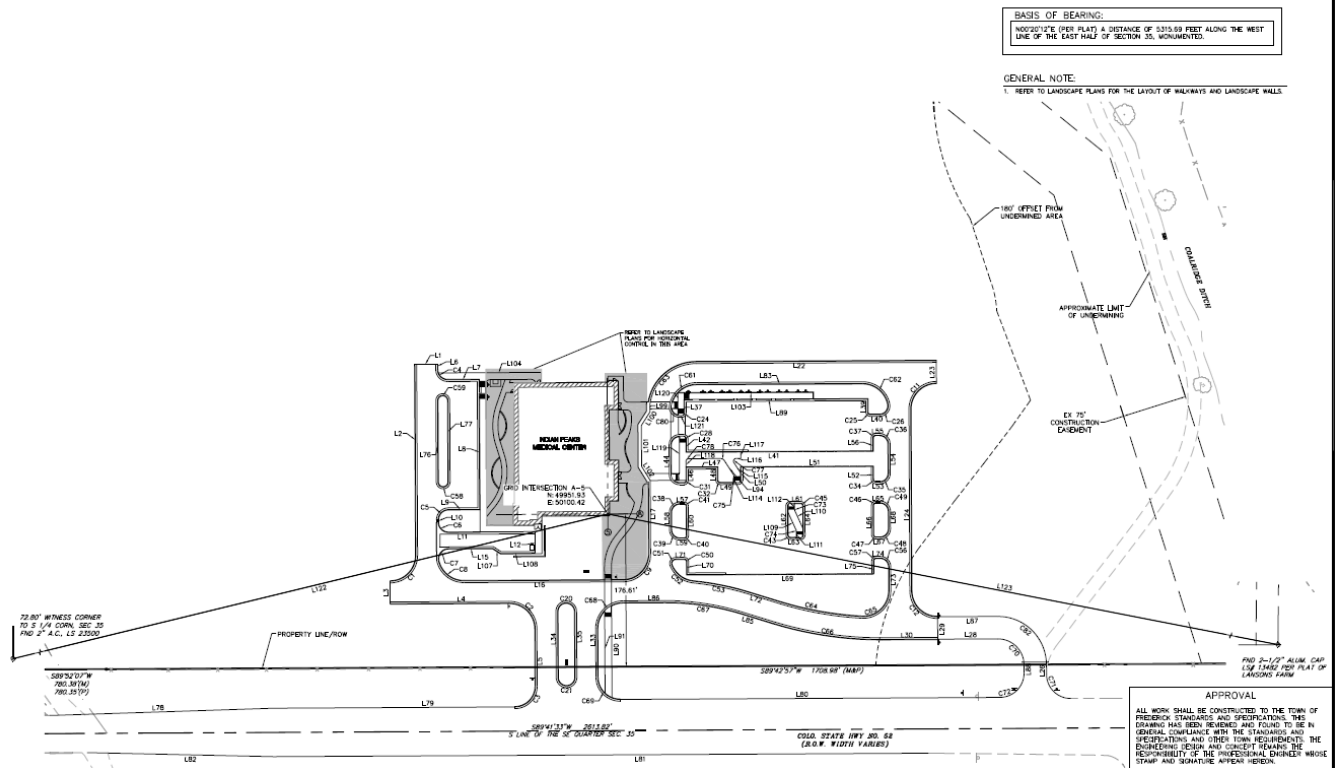
The foregoing instrument was acknowledged before me this ____ day of _____, 20__ by _____
_____(signatory's name) as _____(position/title).

My commission expires:

Witness my hand and official seal.

Notary Public

Indian Peaks Medical Center – Phase 1



VICINITY MAP
NOT TO SCALE

EXHIBIT B

PUBLIC IMPROVEMENTS TO BE CONSTRUCTED

Description of Improvement	Location of Improvement (address)	Quantity	Unit Price	Total
12" PVC		1,164 LF	\$44.26	\$51,517.48
8" PVC		604 LF	\$37.78	\$22,819.12
6" DIP (Fire Hydrant Lateral)		29 LF	\$21.45	\$622.95
4" DIP (Fire Service)		96 LF	\$53.10	\$5,097.60
2" Type K Copper (Domestic Service)		80 LF	\$23.91	\$1,912.80
2" Meter & Vault (Domestic Service)		1 EA	\$7,885.58	\$7,885.58
12" 45 Degree Bend w/Thrust Block		2 EA	\$558.00	\$1,116.00
8" 45 Degree Bend w/ Thrust Block		1 EA	\$319.00	\$319.00
12" PVC Plug		3 EA	\$298.00	\$894.00
12" x 12" Tee w/ Thrust Block		3 EA	\$1,109.67	\$3,329.01
12" x 8" Tee w/ Thrust Block		4 EA	\$659.00	\$2,636.00
12" x 6" Swivel Tee w/ Thrust Block		2 EA	\$509.18	\$1,018.36
12" x 4" Tee w/ Thrust Block		1 EA	\$210.00	\$210.00
12" x 2" Tee w/ Thrust Block		1 EA	\$200.00	\$200.00
2" Blowoff		2 EA	\$2,148.68	\$4,297.36
12" Cap w/ Thrust Block		4 EA	\$232.16	\$928.64
6" Gate Valve		2 EA	\$843.00	\$1,686.00
8" Gate Valve		1EA	\$1,513.00	\$1,513.00
12" Gate Valve		9 EA	\$2,841.00	\$25,569.00
4" DI Valve		1 EA	\$770.00	\$770.00
2" Curb Stop		1 EA	\$462.00	\$462.00
Fire Hydrant Assembly		2 EA	\$1,854.00	\$3,708.00
Vertical Deflections		10 EA	\$461.40	\$4,614.00
TOTAL				\$143,125.00

EXHIBIT F

SPECIAL PROVISIONS APPLYING TO MEMORANDUM OF AGREEMENT FOR PUBLIC IMPROVEMENTS

This Exhibit F is attached to and incorporated into that certain Memorandum of Agreement for Public Improvements for the Lansons Farm Subdivision Amendment (aka Indian Peaks Medical Center Phase 1) by and between the Town of Frederick, a Colorado municipal corporation (the “TOWN”), and Carbon Valley Health Care Holdings Corporation, a Colorado corporation (the “DEVELOPER”). In the event of any conflict between any paragraph, sentence or clause of this Exhibit F and similar provisions elsewhere in the MOAPI, the paragraph, sentence or clause of this Exhibit F shall control.

1.8 (g) The TOWN shall issue no building permit for the construction of any **vertical** structure until all the water lines, fire hydrants, sanitary sewer lines (if required), storm sewer facilities (including storm sewers, catch basins and stormwater detention ponds) and streets (including the curb, gutter and sidewalk, and the street with at least the asphalt base course completed) serving such structure have been completed and granted conditional acceptance.

1.12 (b) DEVELOPER shall submit to the TOWN an Improvement Guarantee for all public improvements related to the Development. The term of the guarantee shall be for a time sufficient to cover the completion of construction of the public improvements and the warranty period through final acceptance; in no case shall the term of the guarantee be for fewer than two years. The guarantee may be in cash, certified check, or a letter of credit in form and substance as shown on “Exhibit C” attached hereto and incorporated herein by reference, or other form of security acceptable to the Town Attorney. The guarantee shall be subject to approval by the Town Attorney. The guarantee, if a letter of credit or other form of security with any time-sensitive access restriction, as may be acceptable to the Town Attorney, shall not expire during the winter season (November 1- April 30). The Improvement Guarantee shall include, but not be limited to, all water system improvements, sanitary sewer collection lines, sanitary sewer lift stations, storm sewer lines and catch basins, storm drainage swales, storm drainage detention ponds and other improvements, streets, curbs, gutter, sidewalks, landscaping, pedestrian and non-motorized paths and trails, street median, boulevard and subdivision entryway landscaping, street lighting park improvements, irrigation systems, gas services, electric services, telephone services, cable television services and any other improvements constructed in relation to the development of the Indian Peaks Medical Center Phase I Development as described by “Exhibit B” or by “Exhibit F”.

(c) The total amount of the guarantee, when provided in the form of cash, certified check, or letter of credit in substantially form set forth in Exhibit E, shall be calculated as one hundred percent (100 %) of the total estimated cost, including labor and materials, of all public improvements to be constructed as described on “Exhibit B,” except those public utilities to be owned by an entity other than the TOWN and for which a separate surety is provided.

TOWN shall not release the Improvement Guarantee until the TOWN has granted final acceptance of the improvements. Partial releases of an Improvement Guarantee may be considered when development is phased and a phase has received conditional acceptance. Irrespective of partial releases, at all times during the warranty period on secured improvements, the TOWN shall retain at least ten percent (10%) of the total improvement costs as an Improvement Guarantee under this section. The costs established in “Exhibit B” shall be reviewed and approved by the Town Engineer; however, partial release of the Improvement Guarantee, as set forth herein, shall not require amendment to the costs set forth in “Exhibit B”.

(d) If Developer proposes and the Town accepts any security guarantee in the form of a certificate of deposit (CD) or other deposit account with time-sensitive access restrictions, the total amount of the guarantee in such form shall be calculated as one hundred twenty five percent (125 %) of the total estimated cost, including labor and materials, of all public improvements to be constructed as described on “Exhibit B,” except those public utilities to be owned by an entity other than the TOWN and for which a separate surety is provided. Partial releases from any deposit account with time-sensitive access restrictions shall only be considered during maturity windows, pursuant to the terms of the financial institution holding such deposit account. Irrespective of partial releases, at all times during the warranty period on secured improvements, the TOWN shall retain at least ten percent (10%) of the total improvement costs as an Improvement Guarantee under this section. The costs established in “Exhibit B” shall be reviewed and approved by the Town Engineer; however, partial release of the Improvement Guarantee, as set forth herein, shall not require amendment to the costs set forth in “Exhibit B”.

1.15 Anticipated Development Impact Fees (Pending final valuation). The TOWN has determined the need for certain development impact fees, as set forth below, which are designed to directly address the specific effect of development intended to occur within the PROPERTY, upon the TOWN’ infrastructure, administration, and delivery of governmental services. The DEVELOPER expressly accepts and agrees to the payment of these development-specific impact fees as established by the TOWN. The TOWN and the DEVELOPER further agree that the TOWN may amend the applicable development impact fees from time to time as needed to address changing effects upon the TOWN’s infrastructure, administration, and delivery of governmental services as a result of development occurring within the TOWN. The development impact fees are to be paid at the then current rate upon subdivision of the property and/or the issuance of building permits whichever is applicable for that particular development impact fee.

Total Improvement Valuation	\$20,000,000.00
Materials Cost	\$10,000,000.00
Permit Fees	\$74,958.75
Plan Review	\$48,723.19
Construction Meter	\$37.00
Electrical	\$35,132.50

CWWC Capital Improvement	\$56,000.00
Frederick Capital Improvement	\$10,000.00
Tap Installation	\$5,150.00
General Capital	\$1,500.00
Electrical	\$650.00
Park Improvement	\$1,000.00
Open Space	\$500.00
Transportation	\$23,472.00
Storm Water	\$101,552.80
Total Fees	\$358,676.24

7. ELECTRICAL SERVICES

7.5 Undergrounding of overhead electrical line will be deferred until the next phase of development on this site, but in no case will the undergrounding of the overhead electric line be completed by later then the start of Phase 2 or within 10 years of the signing of this MOAPI.

Cost Estimate of Deferred Undergrounding of Existing Overhead Lines

South property line frontage at north side of Highway 52 for approximately 2,500 lineal feet

	Quantity	Unit Price	Total
Bury	2,500 LF	\$60.00	\$150,000
Bores	3	\$10,000.00	\$30,000
Structures	1	\$20,000.00	\$20,000
Fees/Legal	1	\$50,000.00	\$50,000
Total			\$250,000

8. DRAINAGE IMPROVEMENTS

- 8.5** The exception will be: building permit will be issued prior to conditional acceptance of public improvement.



TOWN OF FREDERICK

Board of Trustees

Action Memorandum

Jim Wollack, Mayor Pro Tem
Rafer Burnham, Trustee
Amy Schiers, Trustee

Tony Carey, Mayor


Laura Brown, Trustee
Gavin Payne, Trustee
Fred Skates, Trustee

PROPOSAL FOR EXCEPTION FOR PUBLIC IMPROVEMENTS SECURITY FOR CARRIAGE HILLS 2 AND JOHNSON FARM

Agenda Date: Town Board Meeting - January 22, 2013

Attachments: a. None

Finance Review: See note below.
Finance Director

Submitted by: 
Engineering & Utilities Director

Approved for Presentation: 
Town Manager

☐ Quasi-Judicial

☐ Legislative

☒ Administrative

Summary Statement:

The Landhuis Company, owner of lots in Johnson Farm, Carriage Hills Filing 1, and Carriage Hills Filing 2 subdivisions, is requesting that the Town allow them to deviate from the standard security requirement for public improvements.

Detail of Issue/Request:

The Landhuis Company has purchased 124 lots in the Johnson Farm Subdivision and over 120 lots in Carriage Hills Filings 1 and 2. The Town's current standard Memorandum of Agreement for Public Improvements (MOAPI) requires the developer to provide a letter of credit (LOC) in the amount of 100% of the estimated cost of public improvement. Due to the current economic conditions and the substantial amount of improvements this company will be making in Frederick in 2013, Landhuis is requesting that they be allowed to provide a letter of credit in the amount of 20% of the total estimated cost of public improvements for their developments in Carriage Hills and Johnson Farm subdivisions. Landhuis is proposing that, in addition to the initial 20% LOC, they would agree to provide 100% of the

estimated cost of any improvements that are not completed upon any request for a building permit within any phase of their development.

Staff will take the direction from the Town Board and incorporate the appropriate language in the MOAPI's for the Landhuis developments in Johnson Farm and Carriage Hills.

Legal/Political Considerations:

Not Applicable

Alternatives/Options:

Require that the developer provide the standard 100% guarantee for public improvement or some other percentage less than 100%. The Town could consider some type of collateral arrangement.

Financial Considerations:

There is no set requirement for the Town to pay for any incomplete public improvements if the developer fails to complete them as planned. However there may be a desire to perform some work to close out a construction site or complete improvements to facilitate a safe and sightly environment.

Staff Recommendation:

Provide guidance to staff regarding Landhuis Company's request to provide a Letter of Credit in the amount of 20% of the total cost of public improvements, and to increase this security by providing an additional security equal to 100% of the cost of any public improvements that are not completed at the time the first building permit is requested within their development.



TOWN OF FREDERICK

Board of Trustees

Information Memorandum

Jim Wollack, Mayor Pro Tem
Rafer Burnham, Trustee
Amy Schiers, Trustee

Tony Carey, Mayor

Laura Brown, Trustee
Gavin Payne, Trustee
Fred Skates, Trustee

Resolution to Pay off Milavec Lake Bond

Agenda Date: Town Board Meeting - January 22, 2013

Attachments: a. Resolution to pay off the Bond

Finance Review: 
Finance Director

Submitted by: 
Town Manager

Approved for Presentation: 
Town Manager

☐ Quasi-Judicial

☐ Legislative

☒ Administrative

Summary Statement:

Staff was directed to consider the alternatives associated with paying off the Milavec Lake Bond and the factual information was presented at the January 8, 2013 meeting.

Detail of Issue/Request:

The Board requested staff's evaluation of paying off the debt payment associated with Milavec Lake improvements which were constructed around 2003-2004. The payment schedule attached shows that the final payment will be made in July of 2023. There is no penalty for early payment on this bond. Should the Board approve a decision to pay off the existing balance, the Town would need to provide the bank 30 day's notice so the bonds can be called. The next payment date is April 1, 2013 and the total payoff will be \$715,116.89. That will render a savings to the Town of \$169,358.18.

UPDATED:

Following the discussion on January 8, 2013, the Board desired to pay off the debt on the Lake Bond. Accordingly presented is a resolution which will allow staff to pay off the debt on April 1, 2013.

Legal/Political Considerations:

NA

Alternatives/Options:

The Board could choose not to pay off the debt services associated with Milavec Lake's Bond and make annual payments until the terms of the bond are satisfied.

Financial Considerations:

The savings is noticeable if we make payment early and doing so would not significantly or negatively affect our cash balance should revenue projections hold true over time. It would also not impair our ability to bond the NISP project since the Town Board approved the recent rate increase. Regardless of these assumptions, we would still continue to closely monitor revenues and expenditures to ensure the stability and solvency of the fund.

Staff Recommendation:

Staff is supportive of paying off the debt associated with Milavec Lake.

**TOWN OF FREDERICK, COLORADO
RESOLUTION NO. 13-R-5**

**A RESOLUTION OF THE TOWN OF FREDERICK, COLORADO,
AUTHORIZING THE PRIOR REDEMPTION OF THE TOWN OF FREDERICK
WATER REVENUE NOTE, SERIES 2003, PAYMENT TO BE MADE IN FULL
ON APRIL 1, 2013.**

WHEREAS, Town of Frederick, Weld County, Colorado (the “Town”), is a municipal corporation duly organized and operating as a statutory municipality under the Constitution and statutes of the State of Colorado (capitalized terms used and not otherwise defined herein shall have the respective meanings assigned in Ordinance No. 693); and

WHEREAS, the Town is acting hereunder by and through the “Town of Frederick Water Activity Enterprise” organized under the provisions of Title 37, Article 45.1, Colorado Revised Statutes, as amended; and

WHEREAS, the Town of Frederick, on June 5, 2003, adopted Ordinance No. 693, issuing water revenue bonds under the title of “Water Revenue Note, Series 2003” (“Note”) in the amount of \$1,500,000 to finance improvements to rehabilitate Milavec Lake, and existing water reservoir which services the public, including residents of the Town; and

WHEREAS, Valley Bank & Trust agreed to provide financing for the project and the repayment of which is evidenced by the Note; and

WHEREAS, said Note is subject to “prior redemption” as provided in Section 5 of the Note, upon the giving of notice by the Paying Agent in the name of the Town by sending a copy of such notice by first-class postage, prepaid mail, not more than 60 days nor less than 30 days prior to the redemption date, to the Owner of the Note. Such notice shall specify the portion of the Note so to be redeemed and the redemption date; and

WHEREAS, the Town of Frederick, on July 10, 2003, adopted Ordinance No. 699, to amend portions of Ordinance No. 693, with respect to the redemption provisions and the payment provisions of the Note; and

WHEREAS, it has been determined by the Board of Trustees that sufficient funds are available to redeem the Note in full; and

WHEREAS, it is the intent of the Town of Frederick to exercise the “optional redemption” provisions contained in Section 5 (a) of the Note, to redeem the Note on or before April 1, 2013, as provided in Section 5 (b) of the note; and

WHEREAS, exercising the “optional redemption” provisions of the Note will result in an interest savings to the Town of \$169,358.18, over the remaining 10 years term of the Note; and

BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF FREDERICK, COLORADO, AS FOLLOWS:

Section 1. Notice of the Town of Frederick’s intent to redeem the Note on April 1, 2013, is hereby given to Valley Bank & Trust by/through the Paying Agent as provided by Section 5 (b) of the Note. A copy of said notice shall be sent to the Owner of the Note by first-class, postage prepaid mail, not

more than 60 days nor less than 30 days prior to the redemption date.

Section 2. The Note shall be paid in full on April 1, 2013, by depositing with the Paying Agent, the amount of \$715,116.89.

**INTRODUCED, READ, PASSED, AND SIGNED THIS ____ DAY OF _____ ,
2013.**

ATTEST:

TOWN OF FREDERICK

By _____
Meghan C. Martinez, Town Clerk

By _____
Tony Carey, Mayor



TOWN OF FREDERICK

Board of Trustees

Action Memorandum

Jim Wollack, Mayor Pro Tem
Rafer Burnham, Trustee
Amy Schiers, Trustee

Tony Carey, Mayor

Laura Brown, Trustee
Gavin Payne, Trustee
Fred Skates, Trustee

Facilities Maintenance Service Agreement

Agenda Date: Town Board Meeting - January 22, 2013

Attachments:


- a. Independent Contractor Agreement
- b. Bid Summary

Finance Review: This is a budgeted item under Fund Number 100-75000-4135.
There are sufficient funds to cover this contract.



Finance Director

Submitted by: Kiel Mangus
Public Works Director

Approved for Presentation: 

Town Manager

☐ Quasi-Judicial

☐ Legislative

☐ Administrative

Summary Statement:

Approval of the attached contract would commit the Town to a 1-year contract with Total Facility Care, LLC for the rest of 2013 and would give the Town the option to renew the contract annually for up to two years.

Detail of Issue/Request:

The Town of Frederick recently completed a 1-year service agreement with Total Facility Care, LLC. In an effort to seek the best value for the Town of Frederick for cleaning services for the Town's buildings and facilities, staff received proposals on cleaning services for the rest of 2013. It is staff's belief that it is our responsibility as Town employees to seek out the best, most thorough, and most fiscally beneficial contract services for the Town of Frederick.

Staff received three proposals for cleaning services; Total Facility Care, LLC, The Key People Company, and The Finishing Touch, Inc. The bid results tabulation is attached to this document for reference.

Total Facility Care, LLC provided facility cleaning services for the Town in 2012. They have done a good job and been responsive to needs of the town. They were not the low response in this case, but were close and lowered their pricing for cleaning from 2012. Staff feels the larger issue with cleaning services is continuity when pricing is close. It takes 2-3 months for a facility cleaner to truly get a good feel of the facilities and the needs/wants of the employees in the buildings. For that reason staff feels the financial difference between Total Facility Care, LLC and The Key People Company was not great enough to warrant a change for financial reasons over continuity of service. At the end of 2013 staff will evaluate the performance of Total Facility Care, LLC and look at the budget for 2014 to determine if renewal is warranted and financially feasible in the budget.

Staff requests the Town Board of Trustees authorize Mayor Tony Carey, on behalf of the Town Board of Trustees, to sign and execute the attached Independent Contractor Agreement (ICA) between the Town of Frederick and Total Facility Care, LLC. for the performance of the 2013 Facilities Maintenance Services.

Legal/Political Considerations:

The attached agreement was prepared and reviewed by the Town Attorney and is acceptable in form and content.

Alternatives/Options:

The Town Board of Trustees can opt not to execute this new Independent Contractor Agreement for the 2012 Facilities Maintenance Services and direct staff to go back and receive more proposals, or could direct staff to accept one of the other proposals received. It is staff's opinion that in order to continue to secure the most beneficial, cost effective services for the Town of Frederick, it is necessary to let these services out to the competitive proposal process. Total Facility Care, LLC has done a good job serving the towns needs and even lowered their prices for 2013 to remain competitive.

Financial Considerations:

Please See Fiscal Note above

Staff Recommendation:

Staff recommends that the Board approve the attached Independent Contractor Agreement (ICA) for Facilities Maintenance Services for 2013 with options to renegotiate and renew, with Board approval, this ICA for an additional two years in one-year increments, and authorize the Mayor to sign this Agreement.

INDEPENDENT CONTRACTOR AGREEMENT

THIS INDEPENDENT CONTRACTOR AGREEMENT (the "Agreement") is made and entered into this ____ day of _____ 2013 (the "Effective Date") by and between the Town of Frederick, Colorado, a Colorado municipal corporation (the "Town") and Total Facilities Care, L.L.C., ("Contractor").

WHEREAS, The Town desires to engage the services of Contractor to provide the service more fully described on Exhibit A; and

WHEREAS, the Contractor wishes to become associated with the Town as an independent contractor; and

WHEREAS, the parties wish to memorialize their contractual relationship.

NOW, THEREFORE, incorporating the foregoing Recitals herein, which are hereby acknowledged as being true and correct, and in consideration of the mutual promises, agreements, undertakings and covenants, as set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby mutually agree as follows:

SECTION 1: PARTIES

1.01 Town. Town is a municipal corporation located in Frederick, Colorado.

1.02 Contractor. Contractor is a private, independent business who will exercise discretion and judgment of an independent contractor in the performance and exercise of its rights and obligations under this Agreement. Contractor shall use its own judgment and skills in determining the method, means, and manner of performing this Agreement. Contractor shall be responsible for the proper performance of this Agreement in accordance with any and all applicable federal, state, and municipal laws, regulations, and orders.

1.03 Intent of the Parties. By this Agreement, Town and Contractor intend for Contractor to be an independent contractor in relationship to the Town and not the Town's employee. Consequently, Contractor will not be considered an employee or agent of the Town at any time under any circumstances, for any purpose.

SECTION 2: TERM, DUTIES, COMPENSATION

2.01 Term. This Agreement shall commence on the Effective Date, and shall remain in existence for a period of one (1) year unless sooner terminated as herein provided, and if necessary shall be submitted to the Town sixty (60) days prior to the expiration of the Agreement to consider renewal. This Agreement may be extended for up to two (2) additional one-year

periods upon the term reflected in Exhibit A, subject to written agreement of the parties and annual appropriation by the Town.

2.02 Duties and Compensation. The Contractor's duties, compensation and provisions for payment thereof shall be as set forth in Exhibit A, and any contemplated change in said terms shall be submitted to the Town in writing for review and approval prior to any such change.

2.03 Background Check. The Town may, at its' sole discretion, conduct a background check of Contractor, its owners and employees. Contractor agrees to execute any forms necessary to facilitate the background check..

SECTION 3: OPERATIONS

3.01 Expenses: The Contractor shall not incur any expense or debt on behalf of the Town without written authorization.

3.02 Federal, State, and Municipal Laws and Regulations. Town and Contractor each agree to abide by all applicable federal, state, and municipal laws and regulations and rules.

SECTION 4: INSURANCE AND INDEMNITY PROVISIONS

4.01 Insurance. Contractor shall maintain and keep in force during the term hereof one or more policies of liability insurance written by one or more responsible insurance carrier(s), which will include protecting and indemnifying the Town in the following amounts:

- a) Comprehensive General Liability - \$2,000,000 combined aggregate
- b) Automobile Liability - \$1,000,000
- c) Workers Compensation

Each liability insurance policy shall name the Town as an additional insured. Contractor shall furnish an original counterpart of such insurance policy to the Town upon the Town's written request. Contractor shall also furnish to the Town appropriate certificates for such insurance which shall include a commitment by each insurance company to notify the Town in writing of any material change, expiration or cancellation of the insurance policy required hereunder not less than thirty (30) days prior to such change, expiration or cancellation becoming effective. In addition to the above, Contractor shall obtain and keep in force during the term hereof such insurance required by any law or regulation, or prudent business practices.

4.02 Damage and Indemnity. Contractor assumes full responsibility for any and all damages caused by Contractor's exercise of its activities as authorized by this Agreement. Contractor agrees that it will at all times protect, defend and indemnify and hold harmless the Town, its officers, agents, employees, tenants and their successors and assigns from and against all liabilities, losses, claims, demands, actions and court costs (including reasonable attorneys'

fees), arising from or growing out of loss or damage to property or injury to or death to any persons resulting in any manner from the actions or failure to act of Contractor or any invitees, guests, agents, employees or subcontractors of Contractor, whether brought by any of such persons or any other person arising from Contractor's activities as authorized by this Agreement. Contractor shall promptly pay to the Town, its successors or assigns, the full amount of any such costs, loss or damage which the Town, its successors or assigns may sustain or incur, or for which the Town, its successors or assigns, may become liable.

SECTION 5: TERMINATION

5.01 Termination. Either party upon fifteen (15) days prior written notice may terminate this Agreement with or without cause.

a) Neither party shall be liable or deemed to be in default for any delay or failure in performance under this Agreement or interruption of service resulting, directly or indirectly, from acts of God, civil or military authority, acts of public enemy, war, riots, civil disturbances, insurrections, accidents, fire, explosions, earthquakes, floods, or any causes beyond the control of such party.

b) Upon termination by either party, Contractor shall immediately cease any and all activities related to this Agreement, and shall return any keys, materials, tools, or other items provided by the Town to the contractor in conjunction with this Agreement.

SECTION 6: MISCELLANEOUS

6.01 Savings Clause. If any part, term, or provision of this Agreement is declared unlawful or unenforceable, the remainder of this Agreement shall remain in full force and effect, except that, in the event any state or federal governmental agency or court authoritatively determines that the relationship between Contractor and Town is one of employment rather than independent contractor, this Agreement shall become null and void in its entirety.

6.02 Conflicts of Interest; Non-hire Provision. Contractor is free to enter into this Agreement, and that this engagement does not violate the terms of any agreement between the Contractor and any third party. During the term of this agreement, the Contractor shall devote as much productive time, energy and abilities to the performance of its duties hereunder as is necessary to perform the required duties in a timely and productive manner. The Contractor is expressly free to perform services for other parties while performing services for the Town. For a period of six months following any termination, the Contractor shall not, directly or indirectly hire, solicit, or encourage to leave the Town's employment, any employee, consultant, or contractor of the Town or hire any such employee, consultant, or contractor who has left the Town's employment or contractual engagement within one year of such employment or engagement.

6.03 Right to Injunction. The parties hereto acknowledge that the services to be

rendered by the Contractor under this Agreement and the rights and privileges granted to the Town under the Agreement are of a special, unique, unusual, and extraordinary character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated by damages in any action at law, and the breach by the Contractor of any of the provisions of this Agreement will cause the Town irreparable injury and damage. The Contractor expressly agrees that the Town shall be entitled to injunctive and other equitable relief in the event of, or to prevent, a breach of any provision of this Agreement by the Contractor. Resort to such equitable relief, however, shall not be construed to be a waiver of any other rights or remedies that the Town may have for damages or otherwise. The various rights and remedies of the Town under this Agreement or otherwise shall be construed to be cumulative, and no one of them shall be exclusive of any other or of any right or remedy allowed by law. Contractor waives any and all right to injunctive relief in the event of any dispute with the Town, and the Contractor's sole remedy in such a dispute shall be at law.

6.04 Independent Contractor. This Agreement shall not render the Contractor an employee, partner, agent of, or joint venturer with the Town for any purpose. The Contractor is and will remain an independent contractor in their relationship to the Town. The Town shall not be responsible for withholding taxes with respect to the Contractor's compensation hereunder. The Contractor shall have no claim against the Town hereunder or otherwise for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind.

IMPORTANT NOTICE: Independent contractor is not entitled to unemployment insurance benefits unless Independent Contractor or some other entity provides unemployment compensation coverage. Independent Contractor is obligated to pay federal and state income tax on any moneys paid pursuant to the this contract.

6.05 Illegal Aliens. The Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. The Contractor certifies that (i) Contractor does not knowingly employ or contract with any illegal aliens; (ii) Contractor has confirmed or attempted to confirm the employment eligibility of all employees who are newly hired for employment in the United State; and (iii) Contractor shall not enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. The Contractor shall comply with all reasonable requests made in the course of an investigation by the Colorado Department of Labor and Employment. If the Contractor fails to comply with any requirement of this provision, the Town may terminate this contract for cause and the Contractor shall be liable for actual and consequential damages to the State. A Contractor that operates as a sole proprietor hereby swears or affirms under penalty of perjury that the Contractor (i) is a citizen of the United States or otherwise lawfully present in the United States pursuant to federal law; and (ii) shall produce proper identification prior to the effective date of this Contract.

6.06 Ability to Bind the Other Party. Neither Town nor Contractor is the agent of the other, and neither shall have the right to bind the other by contract or otherwise, except as specifically provided in this Agreement.

6.07 Applicable Law. This Agreement shall be construed according to the laws of the State of Colorado.

6.08 Time. Time is of the essence of this Agreement and of each covenant thereof. In the computation of any period of time, which shall be required or permitted hereunder, for notice, or under any law for any notice or other communication or for the performance of any term, condition, covenant, or obligation, the day from which such period runs shall be excluded and the last day of such period shall be included, unless it is a Saturday, Sunday or legal holiday, in which case, the period shall be deemed to run until the end of the next day which is not a Saturday, Sunday, or legal holiday.

6.09 Recitals and Exhibits. The Recitals hereto and any Exhibits which may be attached to this Agreement are hereby incorporated herein and made a part of this Agreement by this reference; however, in the event of a conflict between provisions in this Agreement and any exhibits, the provisions in this Agreement shall control.

6.10 Attorney's Fees. If either party employs an attorney to enforce this Agreement, the party in default shall pay the prevailing party the reasonable expenses of the prevailing party, including but not limited to attorney's fees reasonably incurred whether occasioned by litigation or not.

6.11 Assignment and Subcontracting. Contractor may not delegate, assign or subcontract all of any part of its duties and obligations hereunder without obtaining the Town's prior written consent.

6.12 Waiver of Conditions. Contractor may not waive all or any part of its duties, obligations or conditions hereunder without obtaining the express written consent of the Town.

6.13 Merger of Understanding. The provisions of this Agreement represent the entire and integrated agreement between the Town and the Contractor and supersede all prior negotiations, representations and agreements, whether written or oral, except as where noted. This Agreement may be modified only by a written document signed by both parties and approved by the Town Council at a public meeting. This Agreement is confidential and proprietary between the parties and shall not be disclosed to any third party without an agreement between the parties to that effect in writing.

6.14 Third Party Rights. The parties do not intend to confer any benefit hereunder on any person or entity other than the parties hereto and their respective successors and assigns.

6.15 Waiver. No consent or waiver, express or implied, by a party to or of any breach or default by the other in the performance by the other of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of such party or any other party of the same or any other of its obligations. Failure on the part of any party to complain of any act or failure to act of any other party or to declare any such party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder.

6.16 Captions. The captions in this Agreement are inserted only for the purpose of convenient reference and in no way define, limit or prescribe the scope or intent of this Agreement or any part thereof.

6.17 Acknowledgment of Review. Contractor hereby expressly acknowledges that he/she has reviewed and understands each and every provision of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates written below.

TOWN

CONTRACTOR

Town of Frederick, Colorado

Total Facilities Care, L.L.C.

By _____
Tony Carey, Mayor (Date)

By _____
Pete Gazlay, President (Date)

ATTEST:

Meghan Martinez, Town Clerk

EXHIBIT A

DUTIES AND COMPENSATION

DUTIES:

The Contractor will perform the services listed below. Contractor and its employees and agents, will report directly to Tony Huerta, Town Public Works Director and to any other party designated by Public Works Director in connection with the performance of the duties under this Agreement and shall fulfill any other duties reasonably requested by the Town and agreed to by the Contractor.

General:

Providing cleaning services in the Town facilities including the Town Hall/Administration Building at 401 Locust Street, the "Old Firehouse" Building (located directly west of the Town Hall/Administration Building), the Police/Court Building at 333 5th Street, and the Public Works Facility's front office areas at 5949 Tipple Pkwy) (excluding shop and/or work bay areas).

Area specifics:

All entrances, reception areas, offices and cubicles, hallways, conference rooms, and common areas, to be cleaned twice a week, consisting of:

1. Dust all surfaces (both vertical and horizontal) of desks, tables, filing cabinets, cloths, office furniture, tops of cubicle walls, tops of doors and door frames, corners and edges of ceilings, baseboards, partitions, and air vents, computer monitors, and wall hangings.
2. Vacuum upholstered furniture to remove dust and lint.
3. Wipe clean and sanitize all telephone receivers and dust the bases.
4. Spot clean horizontal surfaces for removal of spillage, marks, and coffee rings.
5. Empty all trash receptacles, replace the liners and remove trash to a collection point.
6. Clean, sanitize, and polish all sinks and drinking fountains.
7. Clean fingerprints and smudges from entrance glass doors.
8. Wipe and clean all interior windows and window sills.
9. Spot clean fingerprints and smudges from partition glass and walls, and light switch plates.
10. Sweep all hard surface floors with chemically treated mop head.
11. Thoroughly mop all hard surface floors, taking care to get into corners & along edges to remove stains or spillage marks.
12. Vacuum all carpeted areas wall to wall, including behind doors and into corners.

All kitchen areas and break room areas to be cleaned twice a week, consisting of:

1. Dust mop/sweep all hard surface flooring to remove loose debris.
2. Damp mop all hard surface flooring to remove spills and soil.
3. Wipe down all tables and counters with a disinfectant.
4. Clean and polish sink and back splash area.
5. Remove trash to collection point and replace liners as needed.
6. Remove splash marks from around sink and trash receptacles.
7. Spot clean exterior of refrigerator and any other appliances.
8. Clean interior and exterior of microwave ovens.
9. Vacuum all carpeted areas and runners.
10. Dust all exposed surfaces, tops of doors, tops of appliances, and air vents.

All restrooms (including the Shop Restroom in the Public Works Building) to be cleaned twice a week, consisting of:

1. Empty trash receptacles and wash, and sanitize the outside of trash receptacles and dispensers.
2. Disinfect door handles, partition handles, and light switches.
3. Clean and polish all dispensers, mirrors, and fixtures, and bright work, and sanitize.
4. Clean and sanitize all sinks, toilets, toilet seats and urinals and all partitions and walls around toilets and urinals.
5. Spot clean walls and partitions to remove smudges and graffiti.
6. Dust tops of doors, partitions, mirrors, and air vents.
7. Restock all paper products and hand soap.
8. Sweep and mop floor with disinfectant.
9. Empty sanitary napkin receptacle and spray with a disinfectant.

Additional Services:

Work not within the base Scope of Work, but guaranteed by Contractor as needed:

- Steam Cleaning of carpeted floor areas (Lump Sum Price per Building)
- Spot Removal from carpeted floor areas (Lump Sum Price per Building)
- Stripping, Scrubbing, and Re-Waxing of hard surface floors (Lump Sum Price per Building),
- Cleaning of Exterior Window (Lump Sum Price per Building).
- Cleaning Lights and Light Fixtures (Lump Sum Price per Building).

COMPENSATION:

As full compensation for the services rendered pursuant to this Agreement, the Town shall pay the Contractor at the hourly/service rates reflected in the attached approved bid, with payment not to exceed such rates without prior written approval by an authorized representative of the Town. Such compensation shall be payable within 30 days of receipt of Contractor's monthly invoice for services rendered supported by reasonable documentation.

EXHIBIT B

APPROVED BID FOR SERVICES

	MONTH	YEAR
Total Facility Care	\$725.00	\$8,700.00
The Finishing Touch	\$1,720.00	\$20,640.00
The Key People Company	\$700.00	\$8,400.00

Facilities cleaned include the following:

- Town Hall**
- Police Department**
- Public Works**
- Old Ambulance Building**



TOWN OF FREDERICK

Board of Trustees

Action Memorandum

Jim Wollack, Mayor Pro Tem
Rafer Burnham, Trustee
Amy Schiers, Trustee

Tony Carey, Mayor

Laura Brown, Trustee
Gavin Payne, Trustee
Fred Skates, Trustee

TO CONSIDER A RESOLUTION AMENDING THE PROCESS FOR THE MAYOR AND TOWN CLERK TO SIGN AND PROCESS APPLICATIONS FOR WATER ALLOTMENTS AS REQUIRED BY THE RULES OF THE NORTHERN COLORADO WATER CONSERVANCY DISTRICT

Agenda Date: Town Board Meeting - January 22, 2013

Attachments:

- a. Resolution No. 13-R-6 for Acquiring Water Allotments in the Northern Colorado Water Conservancy District.
- b. Application to Northern Colorado Water Conservancy District for Cancellation of Temporary Use Permits
- c. Application to Northern Colorado Water Conservancy District for Annually Renewable Perpetual Water Contract for Right to Use Colorado-Big Thompson Project Water Under C.R.S. 37-45-131 (Section 131 Contract)

Fiscal Note: NA

Finance Director

Submitted by: Richard Leffler, P.E.
Engineering & Utilities Director

Approved for Presentation: 
Town Manager

☐ Quasi-Judicial

☐ Legislative

☒ Administrative

Summary Statement:

Approval of the attached resolution would amend the process for acquiring Colorado-Big Thompson water (C-BT) through the Northern Colorado Water Conservancy District (NCWCD) by allowing the Mayor and Town Clerk to make applications to convert Temporary Use Permits for C-BT to perpetual water contracts.

Detail of Issue/Request:

On July 26, 2007, the Frederick Board of Trustees approved Resolution 07R063 authorizing the Mayor and Town Clerk to make applications for Temporary Use Permits from NCWCD on behalf of the Town. This simplified the process and allowed the Mayor and Town Clerk to administratively accept water transferred to the Town by builders and developers as required by the Frederick Municipal Code. It is the policy of NCWCD that renewal of Temporary Use Permits is not allowed and all current Temporary Use Permits must be converted to permanent Section 131 Contract status on an annual basis. It was not clear in Resolution 07R063 that the Mayor and Town Clerk had the authority to apply for conversion of Temporary Use Permits to permanent Section 131 Contracts. The attached Resolution 13-R-6 authorizes the Mayor and Town Clerk to continue to make applications for Temporary Use Permits in order to accept transfers of C-BT water to the Town, and further authorizes the Mayor and Town Clerk to make applications to NCWCD to convert Temporary Use Permits to permanent Section 131 Contract status.

This past year the Town of Frederick accepted 146 acre-foot units of C-BT water from builders and developers. This was accomplished through applications to NCWCD for Temporary Use Permits as provided by Resolution 07R063. Per NCWCD policy all current Temporary Use Permits must be converted to permanent status. Attachment b and Attachment c were provided by NCWCD to accomplish this conversion. Attachment b would cancel current Temporary Use Permits and Attachment c would include the 146 acre-foot units represented by the current Temporary Use Permits in the Perpetual Water Contract for Right to Use Colorado-Big Thompson Project Water Under C.R.S. 37-45-131. This Section 131 Contract is essentially a continuously renewed 1-year contract as specified in paragraph 5. As long as the required annual assessments are paid by the Town, the right to use the Town's C-BT water is automatically renewed for another year. Approval of the attached resolution would authorize the Mayor and Town Clerk to sign and submit the attached Applications to NCWCD, and to sign and submit future Applications on an annual basis as required by NCWCD. It is typical that owners and users of C-BT water process these Applications in an administrative manner similar to what is specified in the attached Resolution No. 13-R-6. Staff will review all water transfers to ensure they comply with the Frederick Municipal Code and direction from the Town Board prior to processing Applications to NCWCD.

Legal/Political Considerations:

The attached agreement has been reviewed by the Town Attorney and is acceptable in form and content.

Alternatives/Options:

Not approve the attached and have staff bring the Applications for converting Temporary Use Permits to permanent Section 131 contract to the Town Board for approval.

Financial Considerations:

None

Staff Recommendation:

Staff recommends that the Board approve the attached Resolution No. 13-R-6 for Acquiring Water Allotments in the Northern Colorado Water Conservancy District.

**TOWN OF FREDERICK, COLORADO
RESOLUTION NO. 13-R-6**

**A RESOLUTION ACQUIRING WATER ALLOTMENTS IN THE
NORTHERN COLORADO WATER CONSERVANCY DISTRICT**

WHEREAS, the Town of Frederick participates in a program of acquiring water allotments in the Northern Colorado Water Conservancy District, and;

WHEREAS, according to the rules and procedures of said District, it is necessary that the Town apply for temporary use permits for said water pending final transfer of title and ownership in the name of the Town of Frederick, Colorado, and;

WHEREAS, the Town Board hereby authorizes the Mayor and Town Clerk to do any and all things reasonable and necessary related to the transfer and issuance of temporary use permits as required by the rules of the Northern Colorado Water Conservancy District, and;

WHEREAS, the Board of Directors of the Northern Colorado Water Conservancy District approved a policy regarding the conversion of temporary use permits. This policy no longer allows the renewal of temporary use permits. Therefore, all current temporary use permits must be converted to permanent contracts annually.

**BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF
FREDERICK, COLORADO, AS FOLLOWS:**

Section 1. The Mayor and Town Clerk are hereby authorized and directed to make applications to the Northern Colorado Water Conservancy District for issuance of temporary use permits in the name of the Town of Frederick for water allotments acquired by the Town, upon payment of all transfer and annual rate changes, until such time as it appears reasonable to the best interest of the Town to have title and ownership of said water allotments permanently transferred in the name of the Town upon the books and records of the Northern Colorado Water Conservancy District.

Section 2. The Mayor and Town Clerk are authorized and directed to make applications to the Northern Colorado Water Conservancy District to convert all temporary use permits to permanent contracts on an annual basis or as required by the Northern Colorado Water Conservancy District

**INTRODUCED, READ, PASSED, AND SIGNED THIS 22nd DAY OF
JANUARY, 2013.**

ATTEST:

TOWN OF FREDERICK

By _____
Meghan C. Martinez, Town Clerk

Tony Carey, Mayor

**APPLICATION TO
NORTHERN COLORADO WATER CONSERVANCY DISTRICT
FOR CANCELLATION OF TEMPORARY USE PERMITS**

The Town of Frederick hereby applies for the cancellation of the following Temporary Use Permits:

<u>Permits Dated</u>	<u>Acre-Feet</u>
March 9, 2012	01
July 13, 2012	05
July 13, 2012	50
September 14, 2012	63
October 12, 2012	12
October 12, 2012	01
November 9, 2012	01
December 14, 2012	<u>05</u>
Total Quantity to be Released	146

Dated at Frederick, Colorado this _____ day of _____, 20____.

TOWN OF FREDERICK

ATTEST:

By _____

(SEAL)

ORDER ON APPLICATION

Application having been made by the Town of Frederick for the cancellation of the above Temporary Use Permits, and Hearing having been held by the Board of Directors of Northern Colorado Water Conservancy District, it is hereby ORDERED that the above Temporary Use Permits be canceled.

Dated the _____ day of _____, _____.

NORTHERN COLORADO WATER
CONSERVANCY DISTRICT

ATTEST:

President

Secretary

APPLICATION TO
NORTHERN COLORADO WATER CONSERVANCY DISTRICT
FOR ANNUALLY RENEWABLE
PERPETUAL WATER CONTRACT FOR RIGHT TO USE
COLORADO-BIG THOMPSON PROJECT WATER
UNDER C.R.S. 37-45-131

Applicant, Town of Frederick, a Colorado municipal corporation acting in its governmental capacity or a water activity enterprise (circle capacity in which applicant is acting), hereby applies to Northern Water, a political subdivision of the State of Colorado, organized and existing by virtue of Title 37, Article 45, Colorado Revised Statutes, for a contract for the right to beneficially use Colorado-Big Thompson Project water under the following terms and conditions:

1. The quantity of water herein requested by Applicant for annual application to beneficial use is 146 acre-feet to be used so long as the Applicant fully complies with all of the terms, conditions, and obligations hereinafter set forth.
2. It is understood and agreed by the Applicant that any water provided for use under this contract by the Board of Directors of Northern Water shall be primarily for domestic, irrigation, or industrial use within or through facilities or upon lands owned or served by said Applicant, provided however, that all lands, facilities, and serviced areas which receive benefit from the use of water (whether water service is provided by direct delivery, by exchange, or otherwise) shall be situated within the boundaries of Northern Water.
3. Applicant agrees that an acre-foot of water as referred to herein is defined as being one-three-hundred-ten-thousandth ($1/310,000$) of the quantity of water annually declared by the Board of Directors of Northern Water to be available for delivery from the water supplies of Northern Water. Applicant agrees that such water shall be delivered from the works of Northern Water at such existing Northern Water delivery point or points as may be specified by the Applicant and that the water delivery obligation of Northern Water shall terminate upon release of water from said works. Further, the Applicant agrees that on November 1 of each year, any water undelivered from the annual quantity made available to the Applicant shall revert to the water supplies of Northern Water.
4. Applicant agrees to pay annually in advance for the amount of water herein provided for use under this contract by the Board of Directors of Northern Water at a price per acre-foot to be fixed annually by said Board; and, further, agrees that the initial annual payment shall be made, in full, within fifteen (15) days after the date of notice from Northern Water that the initial payment is due hereunder. Said notice will advise the Applicant, among other things, of the water year to which the initial payment shall apply and the price per acre-foot which is applicable to that year. Annual payments for each water year thereafter shall be made in advance by the Applicant on or before each October 1, 31 days prior to the start of the water year, at the rate per acre-foot

established by the Board for municipal water use in that water year. For the purpose of this water contract, the water year is defined to be from November 1 to October 31 of the following year.

If an annual payment as herein provided is not made by due date, written notice thereof, by certified mail, will be given by Northern Water to the Applicant at the following address: P.O. Box 435, Frederick, Colorado 80530.

Water deliveries shall be suspended as of November 1 of the new water year until payment of the delinquency is made. If payment is not made within ninety (90) days after the date of mailing of said written notice, Applicant shall have no further right, title, or interest under this contract; and the right of use of water as herein made, shall be disposed of at the discretion of the Board of Directors of Northern Water. Any proceeds from any sale of the right of use to another allottee shall be paid to Applicant over and above Northern Water's actual expense in terminating and disposing of the contract right of use.

5. This right of use shall be perpetual on an annually renewable basis. If the annual payment is made as provided in this application, the right of use shall be automatically renewed another water year without any further notice of Northern Water; if the annual payment is not timely made, as provided above, the right of use shall terminate.
6. Applicant agrees that the water allocation shall be beneficially used for the purposes and in the manner specified herein, and that this right of use is made for the exclusive benefit of the Applicant and shall not inure to the benefit of any successors or assigns of said Applicant without prior specific approval of the Board of Directors of Northern Water.
7. Applicant agrees to be bound by the provisions of the Water Conservancy Act of Colorado; the rules, regulations and policies of the Board of Directors of Northern Water as they now exist or as they exist in the future; and by the Repayment Contract of July 5, 1938, between Northern Water and the United States and all amendments thereof and supplements thereto.
8. Applicant agrees, as a condition of this contract, to enter into an "Operating Agreement" with Northern Water if and when the Board of Northern Water finds and determines that such an agreement is required by reason of additional or special services requested by the Applicant and provided by Northern Water. Said agreement may contain, but not be limited to, provision for water delivery at times or by means not provided within the terms of standard contracts of Northern Water; additional annual monetary consideration for extension of Northern Water delivery services and for additional administration, operation and maintenance costs; or for other costs to Northern Water which may arise through provision of services to the Applicant.

9. Acquisition of this annually renewable perpetual right of use water contract for the Colorado-Big Thompson Project water from Northern Water and the right to the beneficial use of water thereunder by the Applicant necessary; the continued acquisition and use of this water supply is essential for the well-being of the community and for the preservation of the public peace, health, and safety; and the adequate protection of the health of the inhabitants of the community.
10. The governing body of Applicant has duly approved this Application in accordance with all legally required procedures.

Signed this _____ day of _____, A.D., 20_____.

TOWN OF FREDERICK

By_____

ATTEST:

(SEAL)

ORDER ON APPLICATION

Application having been made by or on behalf of all parties interested in this allocation of the right to use Colorado-Big Thompson Project water and after a Hearing by the Board, it is hereby ORDERED that the above application be granted and an allotment contract for 146 acre-feet of water is hereby made to the Town of Frederick, a Colorado municipal corporation, for the beneficial uses set forth in said application upon the terms, conditions, and manner of payment as therein specified.

NORTHERN COLORADO WATER
CONSERVANCY DISTRICT

By _____
President

I hereby certify that the above Order was entered by the Directors of Northern Colorado Water Conservancy District on the _____ day of _____, A.D., _____.

ATTEST: _____
Secretary



TOWN OF FREDERICK

Board of Trustees

Agenda Memorandum

Jim Wollack, Mayor Pro Tem
Rafer Burnham, Trustee
Amy Schiers, Trustee

Tony Carey, Mayor

Laura Brown, Trustee
Gavin Payne, Trustee
Fred Skates, Trustee

AN ORDINANCE OF THE TOWN OF FREDERICK, COLORADO, REVISING CHAPTER 10, ARTICLE VI, SECTION 10-113, OF THE FREDERICK MUNICIPAL CODE, ENTITLED "POSSESSION OF MARIJUANA."

Agenda Date: Town Board Meeting - January 22, 2013

Attachments: a. Proposed Ordinance

Fiscal Note:

Finance Director

Submitted by: Kristin N. Brown
Town Prosecutor

Approved for Presentation:


Town Manager

Summary Statement:

This ordinance enacts language making it unlawful to openly and/or publicly consume marijuana, or in a manner that endangers others.

Detail of Issue/Request:

The ordinance adds a subsection (a)(9) to Section 10-113 of the Frederick Municipal Code, entitled "Possession of Marijuana." Pursuant to the language of the ordinance, it shall be unlawful to openly and/or publicly consume marijuana, or in a manner that endangers others, regardless of whether the person may lawfully possess or consume marijuana.

Legal/Political Considerations:

None.

Alternatives/Options:

Vote to adopt ordinance, or not

Financial Considerations:

Not applicable.

Staff Recommendation:

Staff recommends the Board of Trustees adopt the proposed ordinance.

**TOWN OF FREDERICK, COLORADO
ORDINANCE NO. 1126**

**AN ORDINANCE OF THE TOWN OF FREDERICK, COLORADO,
REVISING CHAPTER 10, ARTICLE VI, SECTION 10-113, OF THE
FREDERICK MUNICIPAL CODE, ENTITLED "POSSESSION OF
MARIJUANA."**

**NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF
THE TOWN OF FREDERICK, AS FOLLOWS:**

WHEREAS, the Frederick Board of Trustees desires to prohibit the open and public consumption of marijuana within the Town; and

WHEREAS, the Frederick Board of Trustees finds that enactment of such provision is in the best interest of the best interest of the health, safety and welfare of the citizens of the Town of Frederick.

Section 1: Chapter 10, Article VI, Section 10-113 of the Frederick Municipal Code is hereby amended with the addition of paragraph (9), to read as follows:

Sec. 10-113. Possession of marijuana.

(9) It shall be unlawful for any person to openly and/or publicly consume marijuana, or in any manner that endangers others. Nothing in this Section or Code shall permit the consumption of marijuana that is conducted openly and publicly, or in a manner that endangers others, regardless of whether a person may lawfully possess or consume marijuana.

Section 2: Chapter 10, Article VI, Section 10-113 (b) and (c) are hereby repealed in their entirety.

Section 3: Severability. If any part, section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such invalidity shall not affect the validity of the remaining sections of the ordinance. The Town Board hereby declares that it would have passed the ordinance including each part, section, subsection, sentence, clause or phrase thereof, irrespective of the fact that one or more parts, sections, subsections, sentence, clauses or phrases be declared invalid.

Section 4: Repealer. All ordinances or resolutions, or parts thereof, in conflict with this ordinance are hereby repealed, provided that such repealer shall not repeal the repealer clauses of such ordinance nor revive any ordinance thereby.

INTRODUCED, READ, PASSED, ADOPTED AND ORDERED PUBLISHED THIS
22nd day of January, 2013.

TOWN OF FREDERICK

By: _____
Tony Carey, Mayor

ATTEST:

By _____
Meghan C. Martinez, Town Clerk

Town of Frederick - List of Bills
December 29, 2012 - January 11, 2013

ACE HARDWARE OF FIRESTONE	Police Supplies	281.44
ADAMSON POLICE PRODUCTS	Uniform, Supplies	959.65
ALSCO	Unform Cleaning PW	541.32
ARIELMIS INC	Permit Software Improvement	937.50
ARROW OFFICE EQUIPMENT, INC.	Building Inspection Tickets	691.97
ASCAP	ASCAP music fees	327.00
ATM INVESTMENT LLC	Refund Overpayment	36.56
B&L REPAIR	Vehicle repairs	379.51
BESTWAY CONCRETE COMPANY	Sidewalk Repairs @ Crist Park	214.50
BROWN P.C., KRISTIN NORDECK	Ordinances	2,099.00
BUILDING RESTORATION SPECIALTIES INC	Repair Miners Wall	2,135.52
C & M AIR COOLED ENGINE INC	Grass Sweeper Repairs	58.15
C.L.E.O.A.	2013 Annual Dues - PD	240.00
CACP	2013 Annual Dues - PD	100.00
CAHN PC, JEFFREY H	Judge Services/January 2013	992.25
CARBON VALLEY CHAMBER OF COMM.	Dues	330.75
CENTRAL WELD COUNTY WATER DIST	December Water Usage	25,362.02
CENTRAL WELD CTY WATER DIST	Water Tap fees	230,000.00
CENTURYLINK	Long Distance Charges	3.41
CHEMATOX LABORATORY INC	Blood Test	35.00
CINTAS DOCUMENT MANANGEMENT	Shredding	71.40
CIVIL RESOURCES, LLC	WCR 18 Improvement Design	16,981.50
CMCA, C/O KATHY VELZEN	Dues - Clerk	160.00
COLORADO ASSOCIATION OF PERMIT TECHS, INC	Dues - Engineering	25.00
COLORADO COMMUNICATIONS & UTILITY ALLIAN	Dues	500.00
COLORADO MACHINERY, LLC	Backhoe Repairs	756.62
Comcast	PW Phone / Internet	79.49
CPS DISTRIBUTORS, INC.	Irrigation Lid	14.89
CUTWATER INVESTOR SERVICES CORP	Investment Services	837.42
D & S ENTERPRISE LLC	Window tint in unit 18	15.00
DENVER BUSINESS JOURNAL	Subscription	200.00
DENVER REGIONAL COUNCIL OF GOVERNMENTS	1st Half Dues	1,050.00
ECHEVARRIA, MARIO MIGUEL	Final Payment Pumphouse Mural	8,375.00
EWING AUTO PARTS INC.	Shop Supplies	49.77
FEDEX KINKO'S	Postage	3,240.92
FERGUSON JENKINS & ASSOCIATES	Web Interactive Map	2,000.00
FISCHER, TRACY	Refund Overpayment	25.00
FREDERICK FIRESTONE FIRE PROTECTION DIST	Blood draw	33.20
FRONTIER BUSINESS PRODUCTS	Copier	8,825.04
GOVERNMENTJOBS.COM INC	Dues - User License, Eval Module	5,650.00
INT'L INSTITUTE MUNICIPAL CLKS	Dues - Clerk	145.00
KING SURVEYORS INC	Consultant - LG Everist	1,354.00
LASTING IMPRESSIONS	Plaque for Officer of the Year 2012	50.00
LONGMONT HUMANE SOCIETY	Impound Fees	35.00
LONGMONT TROPHY & ENGRAVING	Plaque for employee - 15 yrs of service	23.30
LONGS PEAK EQUIPMENT COMPANY	Vehicle Supplies	176.01
MAIN STREET MAT COMPANY	Rugs	356.68
MCDONALD FARMS ENT., INC.	Roll Off - Shop (2)	940.75
METRO CITY & COUNTY MGMT ASSOCIATION	Dues	75.00

Town of Frederick - List of Bills
December 29, 2012 - January 11, 2013

MONROE, TROY	Court Bond	109.95
NEECCO Small Business Development	Dues	1,500.00
O'REILLY AUTOMOTIVE INC	Shop Supplies	165.51
Prairie Mountain Publishing LLP	Publishing	729.50
PRE ACTION FIRE INC	Old Town Hall Security	705.00
RAMEY ENVIRONMENTAL COMPLIANCE	Water Operator Compliance	100.00
RICOH	Copier - per copy fee	688.36
ROCKY MOUNTAIN CHRISTIAN CHURCH	Refund Overpayment to Account	560.00
SAINT AUBYN HOMES	Refund Overpayment	78.96
SAMSON & VIDERGAR	Litigation	82.50
ST VRAIN SANITATION	Police Building	6,371.40
STANLEY SECURITY SOLUTIONS INC	PD Door Repairs	45.34
THE NAKED HANGER	Uniform Dry Cleaning PD	86.50
TIMBERLAN	Board Room Improve, ESRI, SQL	4,865.00
TLO LLC	Investigation Training Tool	180.00
TOTAL FACILITY CARE	Office Cleaning	796.50
ULTIMATE DATABASE SOLUTIONS INC	2013 Support Agreement	4,500.00
VALLEY BANK/PETTY CASH	Postage	224.53
VERIZON WIRELESS	PD Air Cards & Radio	1,674.46
WASTE CONNECTIONS INC	Town Service	32,220.16
WELD COUNTY HEALTH DEPT	Water Testing 07/01-09/30 2012	2,212.50
WELLS FARGO / PETTY CASH	Postage	224.53
WRIGHT EXPRESS	PD Gas	6,633.81
Grand Totals:		<hr/> 382,501.05

**REGULAR BOARD MEETING MINUTES
TOWN OF FREDERICK BOARD OF TRUSTEES
Frederick Town Hall, 401 Locust Street
Tuesday, January 8, 2013**

At 7:00 P.M. Mayor Carey called the meeting to order and requested roll call.

Roll Call

Present were Mayor Carey and Trustees Schiers, Skates, Payne, Brown, and Burnham. Mayor Pro Tem Wollack was not present. Also present were Town Manager Matt LeCerf, Town Attorney Rick Samson, and Town Clerk Meghan Martinez.

Special Presentations:

Carbon Valley Relay for Life: Deborah Henckel presented information about the Carbon Valley Relay for Life. She requested a donation for the event. Motion by Trustee Schiers and seconded by Trustee Brown to approve \$1000.00 for the Carbon Valley Relay for Life. Upon roll call vote, motion passed unanimously.

Public Comment:

The Mayor announced that one person signed up for public comment. Rocky Figurelli, 457 3rd Street, discussed the emergency warning system and the proposed deactivation. He requested that the warning system remain in the downtown. Mayor Carey asked that Town Manager Matt LeCerf pass Mr. Figurelli's contact information on to Chief Poszywak.

Staff Reports:

Administrative Report: Town Manager Matt LeCerf provided the Board with a written report.

Town Attorney's Report: Town Attorney Rick Samson provided the Board with a written status report.

Action Agenda:

LG Everist Annexation: Jennifer Simmons, Planning Director, presented the proposed LG Everist Annexation. She provided the Board with the recommendations from the Planning Commission and outlined the requirements for annexation into the Town. James Sitner, 1715 S. Queen Way Lakewood, CO addressed the Board regarding the annexation and appreciated working with the Town. At 7:42 Mayor Carey opened the public hearing for the LG Everist Annexation. At 7:43 Mayor Carey closed the public hearing.

-Motion by Trustee Payne to approve Resolution 13R1 and seconded by Trustee Schiers. Upon roll call vote, motion passed unanimously.

-Motion by Trustee Burnham to approve Ordinance 1121 and seconded by Trustee Skates. Upon roll call vote, motion passed unanimously.

-Motion by Trustee Schiers to approve Resolution 13R2 and seconded by Trustee Saktes. Upon roll call vote, motion passed unanimously.

-Motion by Trustee Brown to approve Ordinance 1122 and seconded by Trustee Burnham. Upon roll call vote, motion passed unanimously.

Ordinance 1123 Revising Chapter 6 of the Code and Adding Marijuana-Personal Use:

Kristin Brown, Town Prosecutor, provided an amended ordinance and discussed the proposed revision to the Municipal Code. Trustee Burnham requested information on the definition of consumption under the new law. Kristin Brown outlined the public/open consumption of marijuana under the new law. Motion by Trustee Payne to approve the revised Ordinance 1123 and seconded by Trustee Burnham. Upon roll call vote, motion passed unanimously.

Discussion Agenda:

Milavec Lake: Matt LeCerf, Town Manager outlined the options of early payment of the Milavec Lake Bond. A consent agenda item will be added to the next meeting for early payment of the Bond.

Consent Agenda: Motion by Trustee Schiers and seconded by Trustee Skates to approve the consent agenda. Upon roll call vote, motion passed unanimously.

Mayor and Trustee Reports:

Town Manager Matt LeCerf discussed the upcoming work session on commissions and the dedication of the high school bell on January 15, 2013.

Trustee Payne: Happy New Year.

Trustee Schiers: She gave an update on the DRCOG meetings and indicated there would be a meeting later in the month.

Trustee Skates: Requested information on the Indian Peaks groundbreaking. The Help Center has put their bylaws together and received their 501(c)(3). The Help Center plans to hire a director.

Trustee Burnham: Thank you to Matt and Public Works for removing the light pole from in front of The Warrior. He requested additional information be supplied on the agendas as to subject matter of items.

Trustee Brown: Happy New Year. The Frederick Arts Commission met the previous night. She will continue as Chair of the commission. She gave an update as to the direction of the commission. The Savannah HOA meeting is on January 17th at 6:30. She had the opportunity to do a ride along and it was great. She is planning on doing it again. In addition, she will be doing a ride along with Public Works in the near future.

Mayor Carey: The water committee will meet next Monday.

Executive Session: Motion by Trustee Burnham to go into executive session for the purpose of determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and/or instructing negotiators, under C.R.S. Section 24-6-402(4)(e) and or discussion of a personnel matter under C.R.S. Section 24-6-402(2)(f) and not involving: any specific employees who have requested discussion of the matter in open session; any member of this body or elected official; the appointment of any person to fill an office of this body or of an elected official; or personnel policies that do not require the discussion of matters personal to particular employees.

At 9:55 PM the Mayor called the regular meeting back to order. There being no further business for the Board of Trustees to consider, Mayor Carey closed the meeting at 9:55 PM.

Approved by the Board of Trustees:

ATTEST:

Tony Carey, Mayor

Meghan C. Martinez, Town Clerk